courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/09/2026

(2018) 03 PAT CK 0138

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12213 Of 2014

Md. Mahfooz Alam — APPELLANT

Vs

State Of Bihar Through Its Principal Secretary And Ors — RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:
Constitution Of India, 1950 — Article 226
Bihar Government Servant (Classification, Control And Appeal) Rules, 2005 — Rule 9, 14(x)

Citation : (2018) 3 PLJR 630

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Brisketu Sharan Pandey, Arun Kumar Sinha

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 03.02.2014 passed by the respondent no.

2-District Magistrate, Bhojpur, Arrah, by which punishment of forfeiture of 100 per cent pension of the petitioner has been passed.

3. Petitioner was posted as Amin in Circle office, Arrah and was deputed for measuring the land of one businessman Gupteshwar Pandey bearing

Khata No. 53, 35, Khesra No. 366 and 367 measuring area of 37 decimals and 60 decimals. On 12.07.2009, a day was fixed for measurement of land

and on the said date measurement of said land was done by the petitioner and it was found that Gupteshwar Pandey had encroached more than his

own land. Petitioner measured the land and put some bricks as mark of measurement but Gupteshwar Pandey disagreed with the petitioner and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-mahfooz-alam-appellant-hash-...

removed the brick mark from the land in question and also created hindrance in the measurement work. Petitioner informed the concerned officer and

submitted measurement report on 12.07.2009 in Circle Office, Arrah Sadar, Arrah.

4. On 03.11.2009, Gupteshwar Pandey called the petitioner near the gate of his Office and tried to give him some rupees and petitioner denied to

accept the same and thereafter Gupteshwar Pandey and his son forcibly put some rupees in his hand and in connivance with raiding party implicated

the petitioner in a false trap case. Petitioner was arrested in the trap case by Vigilance Department on 03.11.2009 and was taken in judicial custody

and put under suspension. Thereafter respondent no. 2-District Magistrate, Bhojpur, Arrah, ordered for initiation of departmental proceeding against

the petitioner.

5. On 15.09.2010 petitioner was released on bail but no departmental proceeding was initiated against him nor his suspension was revoked and

petitioner challenged his continued suspension order in CWJC No. 11220 of 2011 and by order dated 16.02.2011 the writ petition was allowed and the

order of suspension was set aside by order dated 10.02.2010. Suspension of petitioner was revoked w.e.f 16.09.2010 and again by order dated

21.01.2012 petitioner was put under suspension w.e.f. 17.09.2010 under the provision of Rule-9 of Bihar Government Servant (Classification, Control

and Appeal) Rules-2005 and District Magistrate-respondent no. 2, directed to initiate departmental proceeding against the petitioner and Circle

Officer, Arrah Sadar, was directed to issue memo of charge to the petitioner. Deputy Collector (Departmental Inquiry), Bhojpur, Arrah was appointed

as Conducting Officer vide memo dated 15.05.2012 and on 29.12.2012, after conclusion of departmental inquiry, the Enquiry Officer submitted enquiry

report in which petitioner was exonerated from both the charges and it was observed that since the departmental inquiry as well as vigilance case are

pending against the petitioner and charges are identical, as such the final order of criminal court is to be awaited. The District Magistrate agreed with

the view of Enquiry Officer. The suspension of petitioner was revoked by order dated 27.05.2013 and petitioner was posted in Circle Office, Sahaar

and it was resolved that decision regarding payment of salary of suspension period will be taken after final order passed in vigilance case. The

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-mahfooz-alam-appellant-hash-…

petitioner joined in the Circle Office, Sahaar on 31.12.2013 and superannuated from the post of Amin, Circle Office, Sahaar, Bhojpur, Arrah and on

04.01.2014, petitioner submitted representation before the Circle Officer, Sahaar, for payment of his retiral benefits then suddenly on 03.02.2014,

District Magistrate-respondent no. 2, reviewed his own order dated 27.05.2013 and passed final order in departmental proceeding, differing with the

finding of inquiry officer and without any reason punished the petitioner under the provisions of Rule-14(x) of Bihar Government Servant

(Classification, Control & Appeal) Rules-2005 and amended Rule-2007, for withholding of full pension and other retiral dues by order dated

30.02.2014. The Disciplinary Authority, Collector, Bhojpur, Arrah, passed order dated 03.02.2014 differing with the finding and opinion submitted by

the Enquiry Officer dated 05.02.2013, in which Enquiry Officer has found both charges not to be proved and further opined that charges in

departmental proceeding and charges in the criminal case are identical, as such department should await the outcome of criminal case. The

Disciplinary Authority, by order dated 27.05.2013, had agreed with the conclusion of Enquiry Officer and thereafter revoked the order of suspension

of the petitioner and he submitted his joining on the transferred post and thereafter retired from said post. The District Magistrate-respondent no.2, by

his order dated 03.02.2014 reviewed his earlier order and found that on the basis of materials available on record and finding of the Enquiry Officer,

and FIR being lodged against the petitioner giving rise to Vigilance Case No. 104 of 2009 dated 03.11.2009, as such charges against the petitioner

stands proved and ordered forfeiture of 100 per cent pension and other retiral benefits under Rule-14 (x) of Bihar Government Servant (Classification,

Control & Appeal) Rules-2005.

6. After hearing the parties, and perusing the materials available on record, it is an admitted fact that the petitioner was arrested in a trap case and

send to judicial custody for receiving Rs. 2000/- as bribe and he was arrested by the Vigilance Department on complaint made by Gupteshwar

Pandey. After release of the petitioner on bail, two charges were framed against the petitioner in which charges were identical to the charges in the

vigilance court and on enquiry conducted by the Enquiry Officer, charges against the petitioner were found not to be proved and the Enquiry Officer

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-mahfooz-alam-appellant-hash-…

came to a conclusion that in the present facts of the case, the department should await outcome of criminal case and the Collector had also concurred

with the finding of the Enquiry Officer and thereafter petitionerâ??s suspension was revoked and he was posted to another Circle Officer, from

where he retired. However, after retirement of petitioner by order dated 03.02.2014, District Magistrate, the disciplinary authority, suo motu reviewed

his own order and found charges against the petitioner in the departmental proceeding to be proved due to lodging of FIR by Vigilance Department

and the same being pending before the Vigilance Court, petitioner was imposed punishment of forfeiture of 100 per cent pension and other retirement

benefits under Bihar Government Servant (Classification, Control & Appeal) Rules-2005. The order of disciplinary authority, the District Magistrate,

Arrah, is neither sustainable in law nor on fact. The order of punishment of forfeiture of 100 per cent pension cannot be passed under Bihar

Government Servant (Classification, Control & Appeal) Rules-2005 but it has to be passed under the provisions of Bihar Pension Rules. The District

Magistrate, Arrah without giving second show cause notice to the petitioner with respect to tentative reasoning for differing with the finding of Enquiry

Officer has imposed punishment of forfeiture of 100 per cent of pension against the petitioner on the basis of FIR being lodged against the petitioner.

FIR is not a substantive evidence and only indicates suspicion against the delinquent and allegation made are to be established in a departmental

proceeding as well as criminal proceeding. No evidence either documentary or oral was laid before the Enquiry Officer and the Enquiry Officer had

also exonerated petitioner of the charges, as such the order passed by the Collector cannot be sustained and is, accordingly, quashed.

7. The respondents are directed to pay provisional pension and gratuity to the petitioner and other retirement benefits as full pension and gratuity

cannot be paid to the petitioner because of pendency of vigilance case against the petitioner and final punishment can be imposed on the outcome of

vigilance case and till then the petitioner is entitled for 90 per cent of provisional pension and 90 per cent gratuity and other retiral dues, till the

conclusion of trial in the vigilance court. Charges in departmental proceeding as well as in the criminal proceeding are identical, as such it was rightly

observed by the Enquiry Officer and concurred by the District Magistrate cum Disciplinary Authority to await the outcome of vigilance case in order

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-mahfooz-alam-appellant-hash-…

to pass final order against the petitioner. Although there is no bar in continuing departmental proceeding as well as criminal proceeding simultaneously

even the charges in both the proceedings are identical and evidence to be led in both proceedings are also similar but in present case decision was

already taken to await outcome of vigilance case for passing the final order and same is not permissible to be reviewed at subsequent stage

particularly when petitioner has been exonerated in departmental proceeding.

8. The respondents are directed to pay 90% provisional pension and gratuity and other retiral dues to the petitioner during pendency of vigilance case.

The respondents are at liberty to pass final order regarding payment of pension/ forfeiture of pension depending upon the outcome of vigilance case.

The writ petition is allowed to the extent indicated above.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/md-mahfooz-alam-appellant-hash-…