

(2021) 04 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 737 Of 2020

Prem Ranjan Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b), 139

Citation : (2021) 04 PAT CK 0006

Hon'ble Judges : Prabhat Kumar Singh, J

Bench : Single Bench

Advocate : Krishna Kant Singh, Balram Kapri

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner and the respondents.
2. Writ petition has been filed for quashing order contained in Memo No. 7092 dated 26.7.2019, issued under the signature of the Registrar, Co-operative Societies, Government of Bihar, Patna (respondent no.3), whereby and whereunder the petitioner has been inflicted with the punishment of withholding of 100% pension under Rules 43(b) and 139 of the Bihar Pension Rules.
3. Short facts giving rise to the writ petition is that at the relevant time, petitioner was posted as Block Co-operative Extension Officer cum In-charge, Purchase Center, Bagaha Bagaha. However, in contemplation of departmental proceeding, petitioner was suspended vide Letter No. 1404 dated 25.12.2016. Charges were framed against him vide Letter No. 2554 dated 1.8.2016 (Annexure 2 to the writ petition) for certain omission or commission in procurement of paddy for the year 2012-13 for which Bagaha (Bhairoganj) Police Station Case No. 120 of 2015 and 121 of 2015 were lodged against him and he was arrested on 25.9.2015. Show cause was asked and after considering reply of the petitioner, charges were found proved and Enquiry Officer found him guilty of grave misconduct. During pendency of the proceeding, petitioner superannuated

on 31.1.2017 as a result of which departmental enquiry was converted under section 43(b) of the Bihar Pension Rules vide Letter No.1872 dated 23.2.2017. After submission of enquiry report, second show cause was asked and after considering reply of the petitioner and the enquiry report, final order of punishment of withholding of 100% pension was passed vide order dated 26.7.2019 (Annexure-10).

4. The petitioner has challenged order of punishment on various grounds including the ground of violation of principle of Natural Justice. It is submitted on behalf of the petitioner that in spite of repeated demand made by the petitioner for supply of documents relied upon by the Enquiry Officer against the petitioner during course of enquiry proceedings, the same was never supplied to him. It is submitted that due to non supply of the copies of these material documents, petitioner could not explain the charges properly and as such he did not file effective and wholesome reply to the show cause. This fact has also been noted by the Enquiry Officer in his enquiry report. Learned counsel appearing for the petitioner further submits that non supply of documents which were used and relied upon by the Enquiry Officer against the petitioner amounts to violation of principle of Natural Justice and on this ground alone, the entire departmental proceedings including the subsequent order of punishment dated 26.7.2019, contained in Annexure 10, passed upon the enquiry report have vitiated and are liable to be quashed.

5. Counter affidavit has been filed by the respondents. In paragraph 4 of the counter affidavit, it is submitted that the petitioner has alternative remedy of appeal before the Appellate Authority which has not been exhausted by him and as such, the instant writ petition is not maintainable. It is further stated that after following all due procedure, order of punishment has been passed.

6. One of the requirement of principle of Natural Justice is to supply copies of documents to the petitioner which have been relied upon by the Enquiry Officer in order to enable him to meet the charges and to put valid defence. In the opinion of this Court, non supply of these relevant documents to the petitioner has resulted into violation of principle of Natural Justice and on this ground alone, entire departmental proceeding including the subsequent order of punishment have vitiated and are fit to be quashed. In this case, Enquiry Officer has also admitted in the enquiry report that certain documents demanded by the petitioner had not been supplied to him. This contention of the petitioner has also not been disputed or controverted by the respondents in the counter affidavit. Moreover, there is no rule of law that the High Court should not entertain writ petition where alternative remedy of appeal is available with the aggrieved person. In this regard, law is well settled that in case of allegation of violation of Principle of Natural Justice or infringement of fundamental right, writ petition is maintainable in spite of availability of appellate remedy to the aggrieved person.

7. In view of discussions made herein above, writ petition is allowed and the

entire departmental proceeding including the punishment order dated 26.7.2019, contained in Annexure 10, are quashed and set aside.

8. Since departmental proceeding and the order of punishment have been quashed on ground of violation of principle of Natural Justice, this matter is remanded to the respondents authorities to move afresh against the petitioner afresh in accordance with law and in tune with the principle of Natural Justice.

9. So far as payment of other admitted retiral benefits are concerned, petitioner is at liberty to make representation before the respondents authorities which shall be disposed of by the authorities in accordance with law.