

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

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**W.P.(S) No. 2005 of 2018**

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Brij Kumar, aged about 69 years, son of late Hari Narayan, resident of Radha Govind Street, Tharpakana, PO -GPO, PS-Lower Bazar, District-Ranchi ..... Petitioner

-- Versus --

1.State of Jharkhand

2.Secretary Cum Commissioner, Commercial Taxes Department, Govt. of Jharkhand, having its office at Project Building, PO and PS Dhurwa, District-Ranchi

3.Deputy Secretary,, Commercial Taxes Department, Govt. of Jharkhand, having its office at Project Building, PO and PS Dhurwa, District-Ranchi

4.Accountant General, Jharkhand, having its office at Doranda, PO and PS Doranda, District-Ranchi ..... Respondents

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner :- Mr. Rajendra Krishna, Advocate  
 For Resp.-State :- Mr. Rohit Sinha, AC to AAG-I  
 For Resp.No.4 :- Mr. Amit Verma, Advocate

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**9/09.09.2020** Heard Mr. Rajendra Krishna, the learned counsel appearing on behalf of the petitioner, Mr. Rohit Sinha, the learned AC to AAG-I appearing on behalf of the respondent-State and Mr. Amit Verma, the learned counsel appearing for the respondent no.4.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. The petitioner has preferred this writ petition for quashing of the notification dated 26.12.2017 contained in Memo no.4582 at Annexure-8 whereby a decision has been taken that 10% pension of the

petitioner will be deducted from the pension for the next 5 years.

4. Mr. Rajendra Krishna, the learned counsel for the petitioner submits that the petitioner has earlier moved before this Court in W.P.(S) No.3679 of 2010 which was disposed of on 04.05.2016 whereby the earlier punishment order of 50 % pension was quashed and the matter was remitted back to the respondent State to decide afresh on the ground of quantum of punishment. He submits that pursuant to that now the State has taken a decision in view of the order dated 26.12.2017 whereby the punishment order has been passed under Rule 139(c) for reduction of 10 % of pension for the next 4 years.

5. The only contention of Mr. Rajendra Krishna is that Rule 139(c) has been wrongly relied in passing of the impugned order. There is rider of show cause and 3 years period and in that view of the matter the impugned cannot sustain.

6. Mr. Rohit Sinha, the learned counsel appearing for the respondent State submits that the show cause has already been issued. So far as rider of 3 years is concerned, he submits that statutory rules provide for taking a decision with regard to the pension. The power being there misquoting a wrong provision in the show cause does not invalidate or take away the jurisdiction or otherwise which is there.

7. In view of the above facts, the Court finds that merely invoking Rule 139(c) the power of the Government for revising an order relating to pension cannot be said that the statutory power is not there. Curtailment of pensionary benefit can be done because of any act even after superannuation when it provides that the Government may themselves have a right to withhold a pension or part thereof if the pensioner is convicted of a serious crime or found guilty of grave misconduct. This grave misconduct would be a misconduct post

superannuation. It is well settled that mere wrong nomenclature of a Rule or the other makes little difference if the power is otherwise available to the authorities. In view of Rule 43(b) and Rule 43(a), the power of the State to curtail pensionary benefit for dereliction committed after superannuation is also there. After remand on the point of quantum, the State has taken a decision by reducing the punishment by way of 10% deduction for 5 years, in view of this fact, no relief can be extended to the petitioner, and accordingly, the writ petition [W.P.(S) No. 2005 of 2018] stands dismissed.

**( Sanjay Kumar Dwivedi, J)**

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