IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5582 of 2000

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Shukdeo Subodh Gandhi, son of Late Rambriksha Ram, Resident of Village-Bhatnahia, P.O.- Narkatia Bazar, P.S.- Darpa, District-East Champaran and at present posted as Executive Engineer, Public Health Engineering Division, P.H.E.D., Sitamarhi.

.... Petitioner.

Versus

1. The State of Bihar.
2. The Commissioner-cum-Secretary, Public Health Engineering Department (in short P.H.E.D.), Bihar, Patna.
3. The Joint Secretary, Public Health Engineering Department, Government Bihar, Patna.
4. Chief Engineer (Rural), Public Health Engineering Department, Bihar, Patna.
5. Engineer-in-Chief-cum-Special Secretary, P.H.E.D., Bihar, Patna.

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Tewary, Adv with Mr. M. Qaiser Raza, Adv & Mr. Manoj Kumar Singh, Adv.

For the Respondent/s : Mr. Sanjay Kumar II, G.A.5.
Mr.Pawan Kumar A.C. to G.A.9.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

CAV JUDGMENT

Date: 23-09-2015

V.Nath, J. Heard the learned counsel for the parties.

This writ application has been filed for quashing the resolution no. 687 dated 02.06.2000 (Annexure-7), resolution no.688 dated 02.06.2000 (Annexure-8), order/notification no. 594 dated 30.06.2000 (Annexure-9) and the order dated 12.06.1999 (Annexure-1). It is apparent that by order dated 12.06.1999 the petitioner was awarded punishment of warning and by order/notification no.594 dated 30.06.2000, the petitioner had been transferred. Further from the perusal of the writ application, it also becomes manifest that the petitioner is mainly aggrieved by the two resolutions no.687 and 688 dated 02.06.2000 and there is no material foundation for assailing the resolution/order dated 12.06.1999 imposing punishment of warning upon the petitioner. During the course of submission also this writ application has been mainly pressed with regard to aforesaid two resolutions dated 02.06.2000.

It would also be apt to mention that earlier the prayer of the petitioner for stay of the resolution/order as contained in Annexure-7, 8 and 9 was considered by this Court and by order dated 04.12.2000, this Court has stayed only the order for punishment of stoppage of two increments with cumulative effect as contained in resolution no.687 dated 02.06.2000 (Annexure-7) and the remaining matter was directed to be examined at the time of hearing.

The facts in brief are that the petitioner at the relevant time was holding the post of Executive Engineer, Public Health Engineering Department, Government of Bihar. He was served a show cause notice dated 30.09.1999 (Annexure-2) alongwith the chargesheet enclosed therewith and was directed to submit his explanation against the punishment for the charges levelled against him. The petitioner submitted his explanation and after considering the explanation of the petitioner, by resolution no.687 dated 02.06.2000 (Annexure-7) the respondents have imposed the punishment (i) for recovery of Rs.2, 28, 999/- in installments from the salary of the petitioner and (ii) stoppage of two annual increments with cumulative effect and punishment of censure to be recorded in the character role of the petitioner for the year 1990-91. By another resolution no.688 of the same date i.e. 02.06.2000, the respondents further imposed the punishment (i) censure to be entered in the character roll of the petitioner for the year 1998-99 and (ii) transfer of the petitioner to non-work cadre with immediate effect for 5 years. By further notification dated 30.06.2000 (Annexure-9) the petitioner was transferred to non-work cadre till further orders.

The learned counsel for the petitioner has submitted that the punishment of withholding two increments with cumulative effect is a major punishment and the same could not have been imposed upon the petitioner without following the procedure prescribed in Rule 55 of Civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter as Rules) . It has been propounded that this major punishment alongwith other punishments could not have been imposed upon the petitioner simply by serving a show cause notice and without departmental enquiry granting opportunity to the petitioner to defend himself to which he was legally entitled. It has also been submitted that in the counter affidavit the fact has been accepted that no proceeding as envisaged under Rule 55 of the Rules was initiated before imposing the punishments as contained in the impugned two resolutions dated 02.06.2000.

The learned counsel for the State respondents has supported the impugned resolutions and has submitted that after issuing the show cause notice as required under Rule 55 A of the Rules and after consideration of the same, the impugned resolution (Annexure-6 and 7) has been legally passed. It has been also submitted that the punishment of censure and recovery of amount are minor punishments and the same cannot be held to be bad for non-compliance of the procedure as prescribed in Rule 55 of the Rules.

After considering the pleadings and submissions on behalf of the parties, it is manifest that the petitioner was issued a show cause notice alongwith chargesheet (Annexure-2) containing the charges which mainly related to gross negligence , disobedience of directives of the department as well as the financial irregularities causing loss to the department. After submission of the explanation by the petitioner, the respondents have issued two resolutions on 02.06.2000. The first resolution no.687 dated 02.06.2000 (Annexure-7) relates to the charges of financial irregularity, violation of the directives of the department and creating extra liability with aspersion on integrity. The second resolution no. 688 dated 02.06.2000 relates to the charges of gross negligence, violation of the directives of the department with aspersion on integrity. Both the resolutions have referred to the consideration of the explanation asked under Rule 55A of the Rules from the petitioner. However, by resolution no. 687 dated 02.06.2000 (Anexure-7) the punishments of recovery of Rs. 2,28, 999/- in installments and withholding of two annual increments with cumulative effect alongwith censure to be entered into character roll of the year 1990-91 have been imposed . By another resolution no.688 of the same date 02.06.2000 the punishment of censure and its entry in the character roll for the year 1998-99 and posting to non-work cadre for a period of 5 years have been imposed.

During the course of submission, the learned counsel for the petitioner has mainly confined his assail to the imposition of the punishments of withholding of two annual increments with cumulative effect and recovery of Rs. 2,28, 999/- primarily on the ground that the procedure prescribed under Rule 55 of the Rules has not been followed even when the punishment of withholding two annual increments with cumulative effect is a major punishment. It is not in dispute that the order of punishments of the petitioner was preceded only by a show cause notice as envisaged under Rule 55A of the Rules even when the withholding of two annual increments with cumulative effect was a major punishment in which case the procedure prescribed under Rule 55 of the Rules was required to be followed.

A bench of this Court in the case of ***Rang Nath Rai Vs. State of Bihar , 1997 (2) PLJR 421,*** on identical facts, has quashed the order imposing such punishments under Rule 55A of the Rules. In that case also the petitioners were found guilty of charges levelled against them and three punishments viz. censure, stoppage of 2 to 7 annual increments with cumulative effect and recovery of certain amount to compensate the loss incurred by the government were imposed. This Court after taking into notice the provisions as contained in Rule 55 and Civil Services (Classification , Control and Appeal)Rules 1930 and relying upon the decision of the apex court in the case of ***Kulwant Singh Gill Vs.State of Punjab, 1991 Supp. (1) SCC 504,*** has held as follows:

> *"....8. The penalty of stoppage of annual increments with cumulative effect, in our opinion, is covered by clause (iii) and not clause (ii) of Rule 49 and, therefore, could not be legally imposed on the petitioners without taking recourse to the regular enquiry under Rule 55..."*
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> *"...9. The impugned orders suffer from an error apparent on the face of the record and are,*

therefore, liable to be imposed…"

"…10. In the result all the writ petitions succeed and are allowed. The impugned orders of the respondents imposing punishment on the petitioners under Rule 55A of the Rules are quashed. However, it will be open for them to proceed in the matter in accordance with law…"

No material has been placed or pointed out on behalf of the respondents to persuade this Court to take a different view in the matter either on facts or in law. It is demonstrable that on the basis of the show cause notice and charge sheet accompanying the same (Annexure-2), the punishments have been imposed upon the petitioner by the two resolutions dated 02.06.2000(Anexure-7 and 8).

Aligning with decision in the case of ***Rang Nath Rai (Supra)***, rendered on identical facts, the present writ application is allowed and resolution no. 687 dated 02.06.2000 (Annexure-7) and the resolution no. 688 dated 02.06.2000 (Annexure-8) are hereby quashed. The respondents are however, at liberty to proceed against the petitioner in accordance with law within a period of four months from the date of receipt/production of a copy of this order, and the entitlement of the petitioner to the refund of the amount recovered from his salary will abide by the result of the fresh proceeding so initiated. However, if no proceeding is initiated against the petitioner in accordance with law within the aforesaid period, the petitioner will become entitled to the refund of the amount recovered from his salary in pursuance to the punishment as imposed by resolution no.687 dated 02.06.2000 (Annexure-7) in that regard and the respondents shall be liable to refund the same in accordance with law /rules. In the facts and circumstances of the case, there shall however be no order as to cost.

(V. Nath, J)

Nitesh/-

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