

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8338 of 2008

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Devendra Prasad Singh ,son of Shri Ram Pravesh Singh resident of
mohalla North Mandiri (Chhakan Tola) P.S. Budha Colony District and
Town Patna presently working as Executive Engineer Public health
Engineering Department Government of Bihar, Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Chief Secretary, Government Of Bihar
3. Secretary, Department of Public health engineering Govt. of Bihar
4. Additional Secretary Department of Public Health engineering
government of Bihar Patna
5. Deputy secretary department of Public health Engineering
government of Bihar Patna
6. Engineer in chief cum Special Secretary Public health engineering
department , Government of Bihar, Patna
7. The Bihar Public Service Commission through its secretary, Bailey
Road, Patna
8. Chairman Bihar Public Service Commission , Bailey Road, Patna,
Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Naryan

For the Respondent/s : AC to SC no. 22

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 07-04-2015 Heard Sri Rajendra Narayan, learned senior counsel,

who was assisted by Mr. Sudhir Kumar Upadhyaya, learned

counsel for the petitioner, learned AC to SC No. 22 and learned

counsel who has appeared on behalf of respondent / B.P.S.C.

The present petition under Article 226 of the

Constitution of India was filed in the year 2008 itself with a

prayer to quash an order contained in Memo No. 484 dated

1.10.2007 (Annexure - 1 to the writ petition) whereby after



receipt of the enquiry report submitted in the departmental proceeding whereby the conducting officer had exonerated the petitioner from all the charges, second show cause notice was issued asking the petitioner to give reply as to why the petitioner may not be dismissed from service. The writ petition was firstly taken up on 8.12.2008 by a single bench of this court and while granting time to learned State Counsel for filing counter affidavit this court considering the submission, on the basis of opinion of Bihar Public Service Commission dated 12.5.2008 and other circumstances, restrained the respondents from imposing any major penalty in respect of the petitioner, until further order. The order of stay is still continuing.

Learned senior counsel for the petitioner assailing the impugned order i.e. Annexure – 1 to the writ petition has argued that once the conducting officer had exonerated the petitioner from all the charges, the disciplinary authority, though was competent to differ with the enquiry report, was required to assign reasons on the point of differing with the enquiry report and thereafter, the disciplinary authority was required to ask the petitioner to file his reply on the difference of opinion. However, by issuance of Annexure - 1 the disciplinary authority has simply proposed to impose punishment of dismissal from service



of the petitioner and on the point of punishment show cause was sought for from the petitioner. According to learned senior counsel for the petitioner it is contrary to the provisions contained in Rule 18 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005. He further submits that even before issuance of notice the State Government had sought opinion from the Bihar Public Service Commission on the point of punishment of dismissal. However, the B.P.S.C. had not agreed with the proposed punishment of dismissal rather B.P.S.C. had recommended for some minor punishment. In this view of the matter the Annexure - 1 has been assailed. Besides this, learned senior counsel for the petitioner submits that during the pendency of the writ petition and while the Annexure - 1 was kept in abeyance by a judicial order passed by this court on 8.12.2008, some important subsequent development has taken place. By way of referring to averment made in the supplementary affidavit and particularly by way of referring to Annexure - 25 to the supplementary affidavit filed on 23rd February, 2015, learned senior counsel for the petitioner submits that even now the Secretary of the Department has proposed to record only censure in the ACR of the petitioner for the year 2003-04 and withholding of one

increment without cumulative effect.

Without going into the merit of the case, the court is of the opinion that since pursuant to Annexure - 1 no action has been taken nor any punishment order has been passed till date, it would not be appropriate for this court to go into the merit of the case. The court proposes to dispose of the present writ petition granting liberty to the petitioner to file reply to the show cause notice i.e. Annexure - 1 to the writ petition within a period of eight weeks from today. The petitioner would be at liberty to bring on record all subsequent developments which have taken place during the pendency of the writ petition as well as during continuance of order of stay, in view of order dated 8.12.2008 whereby this court had restrained respondents from imposing any major penalty.

If such reply is filed by the petitioner within time as indicated above, the court expects that the disciplinary authority without being prejudiced with this order may examine the reply of the petitioner in its right perspective and also considering the subsequent developments as well as recommendation of the Bihar Public Service Commission and pass appropriate order in accordance with law. If possible the authority concerned may provide opportunity of personal hearing to the petitioner and final

decision may be taken preferably within a period of six months from the date of filing of reply by the petitioner.

With above observations, the writ petition stands disposed of.

(Rakesh Kumar, J)

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