

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12459 of 2008

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Dharmendra Kumar Mishra son of Sri Baue Lal Mishra, resident of village Kahariya, Post Office Bariaul, PS Kamtaul, District Darbhanga at present posted on the post of Panchayat Sewak (Secretary) in Darbhanga Block, District Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner Darbhanga Division, Darbhanga
3. The District Magistrate, Darbhanga
4. The District Panchayat Officer, Darbhanga
5. The Block Development Officer Jale, District Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy

For the Respondent/s : Mr. Md. Raisul Haque, SC 4

Mr Md. Obaidullah, AC to SC 4

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 23-04-2015

Petitioner is a Panchayat Sevak. Punishment of withholding of two increments with cumulative effect as well as non-payment of salary for the period of suspension except subsistence allowance came to visit him in terms of Annexure- 2, dated 2.3.2006. This order was passed by the District Magistrate, Darbhanga. The appeal against the said order was also rejected, therefore, writ has been filed for quashing of Annexures 1 and 2.

Submission of counsel for the petitioner is that the enquiry officer did not find the petitioner guilty with regard to charge no.1. So far as charge no.2 is concerned, there is no finding of guilt but there could be a case of lack of supervision or



omission to supervise or extra caution to ensure that food grains stood distributed amongst the labourers. The third charge was drawing advance to complete the work of fencing of a graveyard. This money was sanctioned as per 11th Finance Commission. The allegation is that he made an advance when there is no provision for advance. The finding of the enquiry officer is that there is no mala fide as such established against the petitioner for sanctioning the advance but it could be a case of lack of knowledge of procedure, therefore, he holds the petitioner partially guilty for the third charge.

With the given findings and facts it was not a case where order of punishment was required to visit the petitioner. May be there should have been an order like caution or warning, but an order of withholding of two increments with cumulative effect as well as non- payment of salary can be only passed, if the charges against the petitioner was established and he was held guilty by the enquiry officer. A reading of the charges and finding at the most amounts to lack of diligence on the part of the petitioner and there is nothing to indicate that there was any mala fide in the conduct of the petitioner with regard to charges.

In view of the above, the impugned order contained in

Annexure- 1, dated 16.8.2007 as well as Annexure- 2, dated 2.3.2006 is quashed.

Writ application is allowed.

(Ajay Kumar Tripathi, J)



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