

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13262 of 2015

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Dr. Satyajit Nandquliar, Son of Shri Shiv Chandra Nandquliar, Resident of Mohalla - Road No. 11, Rajendra Nagar, Patna at present posted in the office of Regional Deputy Director Health, Magadh Division, Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Joint Secretary, Health Department, Government of Bihar, Patna.
3. The District Magistrate, East Champaran, Motihari.
4. The Regional Deputy Director, Health, Muzaffarpur.
5. The Civil Surgeon, East Champaran, Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Navjot Yesu, Advocate
Mr. Rajeev Kumar Singh, Advocate

For the Respondent/s : Mr. Kundan Bhadur Singh, SC-22
Mr. Madanjeet Kumar, AC to SC 22.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

5 14-10-2015 Heard learned counsel for the parties

2. This writ application was filed on 24.08.2015 when
the only prayer being as follows:

"1. .. for quashing of Notification contained in Memo No. 832(9)/Health, dated 14/9/2007 issued by the Joint Secretary, Health Department, Government of Bihar by which petitioner has been suspended with immediate effect."

3. The respondents, by an order of this Court dated 27.08.2015, were directed to explain as to why the petitioner was kept under suspension since 14.09.2007. Pursuant thereto, a counter affidavit has been filed wherein the respondents have

produced an order dated 06.10.2015 showing that the order of suspension of the petitioner has been revoked and he has been inflicted with certain punishment.

4. As with regard to continuation of the petitioner under suspension for a period of eight years, the department has come out with an explanation that though the Government's decision, for revocation of order of suspension of the petitioner, had been taken on 01.10.2010, but then, it was on account of an unnecessary query made by one Gopi Kant Jha, the then Deputy Secretary in the Department of Health that his suspension was further continued and that for such action on the part of the concerned official, a show cause notice has been issued on 07.10.2015.

5. Learned counsel for the petitioner, in the light of the stand taken in the counter affidavit, has submitted that the order of punishment cannot be sustained inasmuch as he is not only disproportionate to the allegation of the petitioner being absent from duty for one day, but even otherwise is not sustainable inasmuch as if the petitioner's suspension was unnecessarily stretched even when a decision of the department had already been taken on 01.02.2010, there would be logic/justification for depriving the petitioner for denial of payment of salary for the

period of suspension.

6. In the considered opinion of this Court, the relief sought in this writ application being confined to revocation of order of suspension and the respondents coming out to revoke the order of suspension only after filling of the writ application. It will have to now understand that the impugned order of punishment has been passed, which again is wholly a minor punishment keeping in view his stoppage of three increments on non-cumulative basis.

7. This Court has gone into the inquiry report dated 10.09.2009 when the charges were not found to be proved against the petitioner. This Court, in fact, fails to understand as to how after the petitioner being exonerated by the inquiry officer, was subjected to continue suspension by seeking further report from the Collector of Bettiah District. The only option, being available with the Government after receipt of the inquiry report exonerating the petitioner, was to either accept the report and drop the charges against the petitioner or to differ with the inquiry report but somehow a new mode and method was developed wherein the Collector of the District was asked to make inquiry on his own as with regard to the petitioner indulging into private practice even when same charge was not found to be proved by



the inquiry officer. The show cause notice that was ultimately issued to the petitioner on 19.08.2011 will itself be pointed to the fact that no reason was given by the Government for differing with the inquiry report, save and accept, that a new fact finding report of the Collector was obtained. That being absolutely impermissible and the petitioner being allowed to continue under suspension for a period of more than four years even from the date of issuance of show cause notice dated 19.08.2011.

8. This Court would find it very difficult to sustain the impugned order of punishment. It is true that the inquiry officer, namely, Dr. A.K.Jha, had not even conducted the inquiry as prescribed under the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the 2005 Rules'), but then the option for the Government was also very limited. Either Government could have gone for a *de novo* inquiry on account of that Dr. A.K.Jha did not conduct the inquiry properly or could have differed with the main inquiry report on the basis of materials on record. That, however, was not done and a third method was involved for inquiry/comment of the Collector of the District.

9. This Court, therefore, would find that the finding of Gopi Kant Jha was not sufficient because such a decision was



taken at the level of the Principal Secretary and, therefore, it becomes very clear that when the petitioner had filed this writ application questioning his prolonged suspension of over eight years, some sort of excuse has been developed in the counter affidavit both by way of passing the impugned order of punishment and while revoking the order of suspension, it has also found an escape goat by way of seeking explanation from Gopi Kant Jha.

10. The long and short, however, of the case is that the petitioner was found to be absent from duty on 06.08.2007 in course of sudden inspection of the Primary Health Centre, Ramgarhwa, Motihari where the petitioner was posted by none else but by the Inspector General (Prison), Bihar -cum-Special District Officer, East Champaran. He had submitted his report, as a result whereof, not only the petitioner but one another doctor, namely, Dr. Shambhu Saran, who also was found to be absent from duty in the same Primary Health Centre, were subjected to a departmental proceeding after being placed under suspension.

11. Thus, it was the inspection report of the Inspector General (Prison), which was the key document. The correctness of that report is not being denied by the petitioner but what is being said is that he, under the orders of his superior authority, was sent



for conducting flood relief camp. This could have been easily verified at that point of time but somehow that was not done and the petitioner was allowed to continue in suspension for a period over eight years. Suspension, in fact, has now been sought to be revoked by way of bringing curtains to the departmental proceeding in form of punishment.

12. As noted above, the mandatory provision of the 2005 Rules, having been not followed, this Court would not be in a position to sustain the order of punishment, but then keeping in view the seriousness of the charge as is also evidenced from the report of the Inspector General of Prison, Bihar, dated 07.08.2007, as contained in Annexure-A, this Court would direct the Principal Secretary of the Health Department to appoint a new inquiry officer who shall now conduct the departmental proceeding keeping in view that the absence of the petitioner from duty had led to discomfort for the people in general suffering in floods.

13. Thus, the departmental proceeding against the petitioner will be conducted afresh and the petitioner will be given liberty not only to file his fresh written statement of defence but also lead evidence in his defence that he was present on duty on 06.08.2007, when the inspection was carried out by the Inspector General (Prisons) Bihar-cum-Special District Magistrate, East

Champaran, Motihari.

14 For the time being, the petitioner's suspension having been revoked, he may be assigned any post but then his entitlement for the period of suspension beyond the subsistence allowance shall be gone into after the fresh inquiry report against the petitioner as submitted by the inquiry officer and a decision is taken by the State Government. This exercise, however, must be completed within a period of six months from the date of receipt of a copy of this order.

15. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

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