

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24 of 2016

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Ashok Kumar Sah son of Late Kailashpati Sah resident of Bariyarpur, Post Office - Dudihan, Police Station - Darpa, District - East Champaran at Motihari at present working on the post of Clerk Madhuban Block, District - East Champaran at Motihari.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate East Champaran at Motihari.
3. The Additional Collector, East Champaran at Motihari.
4. The District Panchayat Officer East Champaran at Motihari-cum-Conducting Officer.
5. The District Treasury Officer East Champaran at Motihari-cum-Presenting Officer.
6. The District Welfare Officer East Champaran at Motihari.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Jitendra Kumar Roy, Advocate
For the Respondent/s : Mr. RAM BALAK MAHTO- AG
Mr. Prabhu Narayan Sharma, A.C. to AG

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 05-09-2016

Heard Mr. Jitendra Kumar Roy, learned counsel for the petitioner and Mr. Prabhu Narayan Sharma, Assisting Counsel to Advocate General.

With the consent of the parties, this matter is being disposed of at the stage of admission stage itself by the present judgment.

The petitioner is aggrieved by that part of the order bearing Memo No. 10 dated 05.1.2015 whereby his pay and allowance has been restricted to the subsistence allowance paid to the petitioner during the period of suspension.

Mr. Jitendra Kumar Roy, learned counsel for the petitioner



has with reference to the Division Bench pronouncement of this Court since reported in **1988 PLJR page 82 (Mahabir Prasad vs. State of Bihar)**, submitted that even though the legal position stands well settled, yet the respondents have been mechanically passing such order of restricting the pay and allowance for the suspension period to the subsistence allowance drawn by a delinquent.

This matter was earlier adjourned enabling counsel for the State to seek instruction and file counter affidavit. A counter affidavit has been filed in which it is stated that the petitioner has been heard in the proceedings and since he has not raised any objection to the penalty imposed, the grievance raised by the petitioner would stand answered in the order of penalty.

I have heard learned counsel for the parties and I have perused the records. It is not in dispute that even though the proceeding was initiated against the petitioner under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rule') as amended from time to time and punishment has been imposed, no opportunity has been granted to the petitioner to defend himself as against the order of restriction of pay and allowance of the petitioner to the subsistence allowance drawn by him during the suspension period. The legal position in this regard stands settled in the judgment of Mahabir Prasad (supra) and since an order of such nature adversely affects a

delinquent, at least he is entitled to be heard in the matter even if it would be a completion of formalities since he has already suffered an order of penalty in the disciplinary proceedings. Nonetheless since an obligation has been cast on the authorities to follow a procedure before passing such nature of order to restrict the pay and allowance of a delinquent employee as settled in the judgment of Mahabir Prasad (supra), the authorities of the State Government are bound by the same and in view of the uncontested position, the part of the order bearing No. 10 dated 05.1.2015 passed by the District Magistrate, East Champaran, Motihari insofar as it restricts the pay and allowance of the petitioner to the subsistence allowance drawn by him during the suspension period is quashed and the matter is remitted back to the District Magistrate, East Champaran, Motihari to proceed in the matter afresh and in accordance with law with opportunity of hearing to the petitioner. The order of the District Magistrate impugned in this writ petition stands modified to the said extent.

The writ petition is allowed.

(Jyoti Saran, J)

S.Sb/-

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