

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14323 of 2014

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Rameshwar Rabidas Son of Jago Ravidas resident of village - Alag Diha, Police
Station - Jainagar, District - Koderma (Jharkhand) Petitioner
Versus

1. The State of Bihar
 2. The Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna
 3. The Secretary, Rural Development Department, Bihar, Patna
 4. The Principal Secretary, Department of General Administration, Government of Bihar, Patna
 5. The Joint Secretary to the Government, Department of General Administration Government of Bihar, Patna
 6. The District Magistrate, Kaimur (Bhabhua)
 7. The Secretary to Departmental Investigation Commissioner, Bihar, Patna
 8. The Deputy Development Commissioner, Kaimur (Bhabhua)
 9. The Departmental Investigation Commissioner Govt. of Bihar, Patna
 10. The Under Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna Respondents
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Appearance :

For the Petitioner/s : Mr. Anil Kumar Sinha, Advocate

For the Respondent/s : Mr. NADEEM SERAJ, GP 20

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 04-03-2016

The petitioner prays for following reliefs:-

(a) For quashing resolution contained in memo no. 08/charge-01-122/2014 Sa 7235/Patna 15 dated 30.5.2014, issued by the Joint Secretary, Department of General Administration, Bihar, whereby he has been informed that his review application has been rejected vide memo, dated 18.11.2008, issued by respondent no.7.

(b) for reinstating him to the promoted post after revoking dismissal order contained in memo no. 12155 dated 18.11.2008.

(c) For grant of salary for his dismissal period i.e. From 18.11.2008 till the date of his reinstatement, as well as salary for the suspension period i.e. from 18.12.1997 to 7.3.2003.

2. The petitioner entered into Bihar Administrative Service in the year 1992, being posted as Circle officer, Chainpur at district Kaimur. Thereafter, he was posted at different places in different capacity. He was departmentally proceeded for (a) misappropriating public money by preparing wrong Muster roll and (b) for committing irregularities in implementing Government policies while posted as Block Development Officer (herein after referred to as the BDO), Chainpur in Kaimur District. He was found guilty of 15 charges vide enquiry report, dated 15.6.2014. On consideration of enquiry report, the disciplinary authority awarded him punishment of dismissal from service.

3. The petitioner challenged the proceeding as well as order of punishment in CWJC No. 18934 of 2008 which was disposed of on 5.12.2013 giving him liberty to avail the remedy of Memorial before the Government. The petitioner thereafter filed representation before the Principal Secretary, Department of General Administration, Government of Bihar, Patna. His representation/review was rejected vide order, dated 20.5.2014, which is Annexure 5. The petitioner has challenged the

disciplinary proceeding, order of punishment as well as order, dated 30.5.2014 dismissing his review/memorial.

4. The petitioner has challenged the impugned orders on a number of grounds. He submits that foremost which were taken into account in order dated 5.12.2013. He has reiterated all the grounds in this writ petition which he has taken in the earlier writ application. Besides this, he submits that the second show cause notice is bad in law, as at the stage of notice itself, the respondents came to a definite conclusion of alleged guilt, which is impermissible in law.

5. Counsel for the State submits that the findings of guilt recorded in the 2nd show cause notice is tentative and not final. He also submits that the writ petition is premature as no representation has been filed before the department in terms of sub-Rule (2) of Rule 24 of the CCA Rules, 2005.

6. I have heard learned counsel for the parties.

7. Since the State has raised the issue of maintainability of this writ petition, I will address this issue first, before I consider the case on its merit.

8. The case of the petitioner is that he has duly exhausted the remedy available under sub-Rule (2) of Rule 24 of the CCA Rules, 2005. I find that the petitioner is a member of the Bihar



Administrative Services and his controlling authority is the Department of Personnel and Administrative Reforms, Government of Bihar, now the General Administration, Government of Bihar. The petitioner has filed his representation against punishment of dismissal awarded by the Government, before the Principal Secretary, General Administration, Government of Bihar. I find that there is due compliance of sub-Rule (2) of Rule 24 of the CCA Rules, 2005. As such, I do not find any merit in the submission of the petitioner that there has been no due compliance of sub-Rule (2) of Rule 24 of the CCA Rules, 2005.

9. This takes me to merit of submissions made by the parties. Case of the petitioner is that the 2nd show cause notice dated 16.7.2007(Annexure 9) is bad in law, as at the stage of issuance of notice, the disciplinary authority has finally decided the guilt of the petitioner which is not permissible in view of the decision in case of Oryx Fisheries Private Limited Vs. Union of India reported in (2010)13 SCC 427. The case of the respondents is that while issuing the 2nd show cause notice, the respondents had not finally decided the guilt of the petitioner. I am unable to accept the views of the learned counsel for the State that the findings of guilt in the 2nd show cause notice is tentative in nature.

I find that the disciplinary authority has recorded conclusive findings of guilt in 3rd line of paragraph 3 of 2nd show cause, dated 16.7.2007, wherein it is observed that the some charges are found proved. The relevant words are quoted herein below:-

“जिसमें कतिपय आरोप प्रमाणित पाये गये।”

The pre determination of guilt renders the 2nd consideration of 2nd show cause notice a mere formality. Paragraph 31 of the judgment recorded in case of Oryx Fisheries Private Limited Vs. Union of India reported in (2010)13 SCC 427 is quoted herein below for easy reference:-

“31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.”

10. In the result, the writ petition succeeds. The impugned order of punishment based on 2nd show cause notice dated 16.7.2007 (Annexure 9) is set aside. The matter is remitted to the

disciplinary authority to proceed afresh from the stage of issuance of second show cause and dispose of the same preferably within a period of four months from the date of receipt of this order.

11. Let a copy of this order be communicated to the concerned respondents.

(Samarendra Pratap Singh, J)

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