

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16611 of 2016

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1. Vijay Prasad Gupta son of Manu Prasad Gupta Resident of Village + P.O. -
Atimi, Police Station - Nawanagar, District - Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Agriculture Department, Bihar, Patna.
3. The Director Agriculture, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar, Adv.

For the Respondent/s : Mr. Alok Kumar Rahi, A.C. to GP21

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-08-2017

Heard Mr. Mukesh Kumar learned counsel for the petitioner
and Mr. Alok Kumar Rahi, learned A.C. to G.P.21 for the State.

The petitioner prays for quashing of the order bearing Memo
No.343 dated 6.3.2014 of the Director, Agriculture whereby the
petitioner has been put under suspension under rule 9(1)(c) of the
Bihar Government Servant (Classification, Control and Appeal)
Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules'). A
copy of the order is impugned at Annexure-1 to the writ petition.

The petitioner is also aggrieved by the order bearing No.614
dated 9.5.2014, whereby the Director, Agriculture even after taking
notice of the fact that a disciplinary proceeding on self same charges
initiated against the petitioner resulted in submission of an enquiry



report exonerating the petitioner of the allegations and which was accepted by the disciplinary authority to drop the charges, yet has proceeded to recall the order bearing Memo No.825 dated 27.5.2013 whereby the proceedings had been dropped, for proceeding afresh against the petitioner.

It is taking note of the absurdity in the order of the Director, Agriculture as well as the abuse of statutory powers so vested in him that this Court while requiring the Director, Agriculture to file his affidavit, made the following observations in the order passed on 28.7.2017.

“Strange are the actions of the State Government. The petitioner was suspended for alleged bribery demand vide order passed on 2.4.2012 at Annexure-3 which was revoked vide order passed on 31.7.2012 present at Annexure-4. A departmental proceeding was initiated vide Annexure-5 dated 5.10.2012. Annexure-6 is the enquiry report exonerating the petitioner of the charges. The report of the enquiry officer holding the charge not proved was accepted by the disciplinary authority vide his order dated 27.5.2013 at Annexure-7 and the departmental proceeding was dropped. The petitioner was given a posting vide Annexure-8 dated 28.6.2013. It is about 9 months thereafter that a second round proceeding is sought to be initiated by issuance of an order of suspension bearing Memo No.343 dated 6.3.2014 at Annexure-1 and vide order bearing memo No.614 dated 9.5.2014 the Agriculture Director has recalled the order dated 27.5.2013 dropping the disciplinary proceedings against the petitioner, a copy of the same is present at Annexure-2.

This Court is at loss to appreciate as to the source of power in the Agriculture Director to issue the order at Annexures-1 and 2 once the proceedings have been dropped for neither any review has been filed by any aggrieved party nor revisional power has been exercised



under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005. The illegality has not stopped here. Even when the earlier disciplinary proceedings was dropped accepting the enquiry report, the Agriculture Director vide his order dated 6.10.2016 has issued a second show cause on disagreement note to the petitioner for the proven charges.

Prima facie this is preposterous, for the power exercised by the Agriculture Director is de hors the service rules. However since this Court finds that the disagreement note placed on record by way of interlocutory application, has not been responded to, allowing time to learned State counsel Mr. Ashok Kumar Choudhary, A.C. to G.P.21 put up this case on 11.8.2017 within 10 cases.”

A supplementary counter affidavit has followed the observation of this Court aforequoted and the Director, Agriculture yet is not willing to correct himself on the legal position rather reiterates the position at paragraph 13 of the supplementary counter affidavit to submit that it is in exercise of review power and considering the gravity of charges that decision has been taken to put the petitioner under suspension and to recall the order dropping proceeding passed on 27.5.2013, a copy of which is placed at Annexure-10 to the writ petition

I have heard learned counsel for the parties and I have perused the records.

It is uncontested that although ‘the Disciplinary Rules’ provide for a review jurisdiction in cases where the disciplinary authority is the State Government as manifest from a plain reading of the



appellate powers present at Rule 24 and the reason is that no further appeal lies against an order of the State Government, even though a revisional jurisdiction does exist under rule 28 but then the exercise is to be done within six months from the date of the order proposed to be revised and the authorities competent to do so are clearly mentioned in the provision. Even the circumstances in which the power of revision can be exercised, are different and puts a limitation of six months for any such exercise. The case in hand is not a case of exercise of a revisional jurisdiction rather the Director, Agriculture, has flatly accepted that he has exercised review jurisdiction and even when this Court has questioned such exercise on the source of power as quoted in the order passed on 28.7.2017 reproduced hereinabove but the Director, Agriculture prefers to remain silent on the query.

It is unfortunate that an identical exercise carried out by the Director, Agriculture was put to question before this Court in **C.W.J.C.No.13820 of 2014 (Akhilshwar Prasad Srivastava Vs. State of Bihar)** and the exercise was quashed inter alia on grounds of lack of jurisdiction which order of this Court has attained finality, according to Mr. Mukesh Kumar, yet it is not proved a guidance for the Director, Agriculture to mend his ways.

The case in hand is another in the chain of litigation generated by the State and this time the authority responsible is Director,



Agriculture.

For the reasons so discussed, the order of the Director, Agriculture bearing memo No.343 dated 6.3.2014 together with the order bearing No. 614 dated 9.5.2014 are held illegal and without jurisdiction as well as contrary to the stipulations present in ‘the Disciplinary Rules’ and are accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.09.2017
Transmission Date	NA

