

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14681 of 2016

Along with
Interlocutory Application No. 6074 of 2017
And
Interlocutory Application No. 7018 of 2017

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Shiv Shankar Son of Late Mohan Lal Mahto Resident of Village-Hathsarganj,
Ward No. 1, P.S. Hajipur Town, District Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Personnel and Administrative Department, Bihar, Patna.
2. The Secretary, the Personnel and Administrative Department, Bihar Govt. Patna.
3. The District Magistrate-cum-Collector, Vaishali, Hajipur.
4. The Additional District Magistrate, Vaishali at Hajipur.
5. The Block Development Officer, Desari Block, Vaishali.
6. The Circle Officer, Desari Block, Vaishali.
7. The Conducting Officer -cum-Sub-Divisional Officer, Mahnar, Vaishali.
8. The Block Development Officer, Patepur Block, Vaishali.
9. The Circle Officer, Patepur Block, Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar,
Mr. Shivjee Singh and
Mr. Mukesh Kumar, Advocates
For the Respondent/s : Mr. Saroj Kumar Sharma, A.C. to A.A.G. 3

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 31-10-2017

Heard learned counsel for the parties.

2. The petitioner has initially moved the Court for the following reliefs:

“i)To issue order/orders, direction/ directions and writ/writs in the nature of certiorari to quash the order dated 01.04.2013 issued under the signature of Respondent no. 3, the District Magistrate, Vaishali, Hajipur vide Memo no. 292, dated 01.04.2013 as contained in Annexure-9 whereby and whereunder the petitioner has been



put under suspension since 04.12.2013 in the light of Rule 9 (i)(ii) of Bihar Govt. Servants (Classification, Control & Appeal) Rules, 2005 herein after referred as Bihar CCA Rules 2005, in short and consequent upon the head quarter has been fixed as the office of Sub-Divisional Officer, Mahnar, and thereafter the petitioner has been directed to report the aforesaid office.

ii) To issue order/orders, direction/directions, writ/writs in the nature of mandamus commanding upon the Respondents concerned to pay dues subsistence allowance after putting the petitioner under suspension.

iii) To hold and declare that the action of the Respondent no. 3 the District Magistrate, Vaishali to put the petitioner under suspension again on 04.02.2013, although the petitioner had given his joining after being enlarged on regular bail by the Hon'ble High Court on very technical grounds, is bad, malafide, malicious, arbitrary and deemed to be unsustainable in the eye of law and on facts both.

iv) To hold and declare that the action of Respondents concerned is not providing an opportunity to the petitioner to represent his case while putting him under suspension through Annexure-9 is in complete violation of Principle of Natural Justice and also tantamounting to the violation of the provision of Article 14 of the Constitution of India.

v) To hold and declare that the action of the Respondent concerned have adversely affected the livelihood of the Petitioner and tantamounting to the violation of Article 21 of the Constitution of India.

vi) For grant of any other relief/reliefs, order/orders to which the petitioner is found to be entitled for in the facts and circumstances of this case.

vii) The petitioner seeks indulgence of this Hon'ble Court to issue an order/orders, direction/directions, writ/writs in the nature of certiorari to quash the letter no. 1861 dated 01.08.2017 issued under the Signature of



Respondent no. 7, i.e. The Conduction Officer-cum-Sub-Divisional Officer, Mahnar, Vaishali, who has been pleased to send the report to Respondent no. 3, the District Magistrate, Vaishali, after conducting the proceeding in departmental proceeding without considering the relevant documents produced by the petitioner during proceeding.

viii) To issue an order/orders, direction/directions, writ/writs in the nature of certiorari to quash the Memo no. 1020 dated 11.09.2017 issued under the signature of Respondent no. 3 the District Magistrate, Vaishali who has simply just consider the report sent by the Respondent no. 7, i.e. "The conducting officer-cum-Sub-Divisional Officer, Mahnar, Vaishali" and found to be failure in not taken into note upon relevant documents and evidence advanced by the petitioner against the charges so framed in "Prapatra "Ka" by the Respondents concerned. Moreover, by the present Memo no. 1020 dated 11.09.2017, the petitioner has been asked to be remain present in the office of Respondent no. 3 on 16.09.2017 for representing his case."

Re.: Interlocutory Application No. 6074 of 2017

3. The present Interlocutory Application has been filed by the petitioner seeking amendment in the writ application to the extent of challenging Letter No. 1861 dated 01.08.2017 i.e., the communication of the respondent no. 7, to the respondent no. 3 enclosing the enquiry report dated 31.07.2017 in Record No. 01/2016-17, in the departmental proceeding against the petitioner, by which all the eight charges against the petitioner have been held to be proved.



4. As the writ petition was filed against the order of suspension and during the pendency of the writ petition, the enquiry report has been submitted, the same is in continuation of the original prayer made in the writ application.

5. Accordingly, prayer is allowed. The challenge to the letter dated 01.08.2017 as well as the enquiry report dated 31.07.2017, shall form part of the reliefs sought for in the main writ application.

6. Interlocutory Application No. 6074 of 2017 stands disposed off.

Re.: Interlocutory Application No. 7018 of 2017

7. The present Interlocutory Application has also been filed by the petitioner seeking further amendment to the extent of challenging the communication of the respondent no. 3 contained in Memo No. 1020 dated 11.09.2017, by which the petitioner was asked to appear and show cause as to why he may not be given major punishment. Since the prayer is made in continuation of the original proceeding, the same is allowed. Challenge to the letter of the respondent no. 3 dated 11.09.2017 shall also form part of the main writ application.

8. Accordingly, Interlocutory Application No. 7018 of 2017 stands disposed off.



Re.: Civil Writ Jurisdiction Case No. 14681 of 2016

9. Learned counsel for the petitioner submitted that coming to the question of the enquiry report, it is very obvious that suddenly the authorities have woken up and proceeded with the departmental proceeding in a manner which is arbitrary. It was submitted that the sudden seriousness shown to the departmental proceeding against the petitioner was the result of the case having been taken up by the Court on 30.06.2017, 01.07.2017 and 25.07.2017 and in that background, the enquiry report dated 31.07.2017, came to be submitted hurriedly without even complying with the basic procedural requirements in law. It was submitted that initially the petitioner was asked for a show cause which he had submitted and thereafter it appears that the response from the Department was also submitted and going through the written response of the petitioner and the written response of the Department, the enquiry report has been submitted, which is totally unsustainable. Learned counsel took a categorical stand that no documents were supplied to the petitioner, either with the show cause or during the departmental proceeding. He submitted that the written response of the Department, which has been totally relied upon for giving a finding of guilt against the petitioner with regard to the charges, was also not supplied to the petitioner. Learned



counsel submitted that in the background of such admitted position, the petitioner was neither aware of the written report submitted by the Presenting Officer of the Department nor its content and further no opportunity of hearing was given, which clearly indicates that in the eyes of law, there was no 'enquiry' held as such enquiry envisages an opportunity to the delinquent and the other side to present their case, argue the matter and upon finally concluding their arguments, the enquiry officer is required to submit his final report.

10. When called upon, learned counsel for the State does not deny the aforesaid factual position but has taken a stand that opportunity was given, as a show cause was issued to the petitioner. On a specific query as to whether the minimum requirement of natural justice is satisfied as the person is required to be given an opportunity of hearing and also any material on which reliance is to be placed by the Department for proving a charge against him, and the same not being done, would make the enquiry report sustainable, there is absolutely no response or assistance.

11. In view of the aforesaid, the Court has no hesitation to hold that the enquiry report submitted is totally unsustainable. Mere issuance of a show cause and that too without



any supporting documents and furthermore reliance on a written report by the Presenting Officer on behalf of the Department concerned, copy of which also not served on the petitioner and thereafter no opportunity of any hearing being given to him has clearly rendered the enquiry report unfit to be relied upon for any purpose, much less in a departmental enquiry where the petitioner faces the threat of even a major punishment.

12. In view thereof, the enquiry report dated 31.07.2017, as forwarded by the respondent no. 7, to the respondent no. 3, stands set aside. Since the enquiry report itself has been set aside by the Court, all subsequent stages in the department proceeding, including issuance of show cause by the respondent no. 3 to the petitioner contained in Memo No. 1020 dated 11.09.2017 also stands set aside.

13. At this stage, learned counsel for the petitioner submitted that yesterday the petitioner has appeared before the respondent no. 3 and has submitted his show cause. In view of the order passed today, setting aside the enquiry report itself, upon which the show cause was based, the submission of show cause by the petitioner becomes redundant.

14. The matter is remitted back to the Enquiry Officer to conduct the enquiry, in accordance with law after giving copies



of materials relied upon by the Department for proving the charge against the petitioner and thereafter giving him an opportunity to rebut the same and also a personal hearing, if so desired, for examination/cross-examination of witnesses. Thereafter, enquiry report shall be submitted to the Disciplinary Authority and consequences shall follow, depending on such enquiry report. However, even the subsequent stage shall be in accordance with the requirement of law by giving opportunity to the petitioner in the event the enquiry report goes against him or the report is in favour of the petitioner and the Disciplinary Authority differs from it. As the petitioner has been under suspension since 01.04.2013, the Court can only indicate that the matter requires urgent consideration.

15. The petitioner shall appear before the respondent no. 7 within two weeks from today, along with a copy of this order. Thereafter, the respondent no. 7 shall conduct the enquiry and submit a report in terms of the requirements of law and the discussions made hereinabove, within six weeks. Depending on the report, the respondent no. 3 shall take appropriate steps, in accordance with law and the discussions made in this order, within the next two months and pass final orders in the departmental proceeding against the petitioner.



16. The writ petition stands disposed off in the
aforementioned terms. It is indicated that the respondents no. 3 and
7 shall strictly comply with the time frame indicated in the order.

17. Learned counsel for the State shall also
communicate the order to the authorities concerned.

18. In view of the submissions made by learned
counsel for the petitioner that even subsistence allowance has not
been paid to him for the last six months, if the same is true, the
petitioner shall appear before the respondent no. 3, also along with
a copy of this order and the respondent no. 3 shall ensure that up-
to-date subsistence allowance is paid to the petitioner within two
weeks thereafter.

(Ahsanuddin Amanullah, J.)

P. Kumar

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