

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20212 of 2013

=====

Rajendra Prasad, Son of Late Ram Kishun Ram, Resident Of Mohalla-
Mirchaibari, Ward No.4, Katihar, P.S.- Katihar, District- Katihar

.... Petitioner

Versus

1. The State of Bihar
 2. The Commissioner, Purnea Division, Purnea
 3. The District Magistrate, Katihar
 4. The Additional Collector-cum-Enquiry Officer, Katihar
 5. The Establishment Deputy Collector, Katihar
 6. The District Panchayat Raj Officer, Katihar-cum-Presenting Officer
- Respondents
- =====

Appearance :

For the Petitioner : Mr. Siya Ram Shahi,
Mr. Indu Bhushan, Advocates
For the Respondents : Mr. Nawal Kishore Singh, SC 2
Mr. Ajay Kumar Singh, AC to SC 2

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the petitioner as well as learned
counsel for the respondents.

2. The present writ petition has been filed for quashing
Memo No. 151 dated 04.02.2013 contained in Annexure-13 passed by
the District Magistrate, Katihar, Respondent No. 3 whereby and
whereunder in a departmental proceeding, the District Magistrate
imposed the penalties withholding of five increments of pay with
cumulative effect as well as no salary will be paid for the period of
suspension and also for quashing the order dated 14.08.2013
contained in Annexure-14, passed in Service Appeal No. 12/2013 by
the Divisional Commissioner, Purnea, Respondent No. 2, whereby and



whereunder the respondent no. 2 reversing the penalties passed by the respondent no. 3 had passed the fresh order of penalties under which the salary of the petitioner was deteriorated to beginning lower pay-scale of Assistant basic pay-scale.

3. Subsequently, learned counsel for the petitioner sought early hearing of the matter by filing a mentioning slip, inter alia, stating that the matter was covered by a decision of this Court in the case of *Dinesh Prasad Vs. State of Bihar & others, 2006 (4) PLJR 514*, and hence confining the writ petition only to this part of the relief sought.

4. Mr. Siya Ram Shahi, learned counsel appearing on behalf of the petitioner, invites attention to the order of punishment dated 04.02.2013 (Annexure-13) whereby the petitioner has been denied payment of salary during the period of suspension. This part of the order has not been interfered in the appeal by the Divisional Commissioner vide order dated 14.08.2013 (Annexure-14).

5. Learned counsel for the petitioner relies on the decision in the case of *Dinesh Prasad Vs. State of Bihar & others (supra)* wherein it has been held as follows –

“9. Apart from these questions, so far the main question for which this matter has been referred, is concerned, it appears that for imposing the punishment no. (iii) that the petitioner shall not get anything for the period of suspension save and except the subsistence allowance, the disciplinary authority was required to give separate show cause notice to the delinquent in terms of Rule 97(3) of the Code. This part of the order, therefore, is not permissible in absence of any such



notice to the delinquent employee.

10. Admittedly, it appears from the materials on record and also from the record produced before us by the State Counsel that no such opportunity was given to the petitioner in terms of Rule 97(3) of the Code. A Bench of this court while considering this question in the case of Pramod Kumar vs. The Champaran Kshetriya Gramin Bank and Ors. reported in 2003(4) PLJR 68 relying upon a decision of this court rendered in the case of Mahabir Prasad vs. State of Bihar reported in 1988 PLJR 82, held that non-observance of the provisions of Rule 97(3) of the Code would amount to violation of the principles of natural justice. The orders impugned on these scores, appear to be violative of the principles of natural justice as referred to above."

6. Learned counsel for the respondents appears and has been heard. In all fairness, he does not seriously dispute the proposition that an opportunity of hearing is required to be given if an employee is denied salary for the period of suspension.

7. Having regard to the aforesaid decision in the case of *Dinesh Prasad Vs. State of Bihar & others (supra)* as well as the stand of the respondents, this Court is satisfied that the impugned order of punishment dated 04.02.2013 (Annexure-13) to the extent that the petitioner has been deprived of salary for the period of suspension is not in accordance with law. The appellate authority in his order dated 14.08.2013 (Annexure-14) ought to have considered this issue which has not been done.

8. In the above view of the matter, the order of the disciplinary authority dated 04.02.2013 (Annexure-13) only to the



extent that it directs for non-payment of salary to the petitioner for the period of his suspension is accordingly set aside and the matter is remanded to him for fresh decision in this regard in accordance with law after grant of opportunity of hearing to the petitioner.

9. The writ petition accordingly stands disposed of.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.10.2017
Transmission Date	N.A.

