IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23088 of 2012

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Gopal Chaudhary S/O Late Yugeshwar Chaudhary R/O Mohalla- Yarpur, Road No.1, P.S. Gardanibagh, Distt.- Patna, At Present Posted As Head Clerk, Before The Pariyojana Karyapalak Padadhikari, Department of Agriculture, Sahar, Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Panchayati Raj Department (Vikash Bhawan), New Secretariat, Baily Road, Patna
2. The Principal Secretary Panchayati Raj Department (Vikash Bhawan), New Secretariat, Baily Road, Patna
3. The District Election Officer Cum District Magistrate, Supaul
4. The Additional Collector, Supaul
5. The Sub-Divisional Officer, Supaul
6. The District Panchayati Raj Officer, Supaul
7. The Block Development Officer Cum Assistant Electoral Registration Officer Pipra, P.S. Pipra, District- Supaul
8. The Block Development Officer, Pipra, Sub-Division, Supaul, District- Supaul
9. The Director, D.R.D.A., Supaul Cum Conducting Officer, Sub-Division, Supaul

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Verma, Advocate

For the Respondent/s : Mr. Amrendra Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 23-08-2017

Petitioner has filed this writ petition and challenges the order of punishment imposed upon him vide order (Annexure-8) dated 27.11.2012 by which punishment of censure and confirmation of the period of suspension has been imposed on 27.11.2012. A charge-sheet was issued to the petitioner and for an inquiry into the matter, an Inquiry Officer was appointed. Proceedings of the inquiry are available as Annexure-6 and it is seen from these proceedings that on 23.08.2011 the Inquiry Officer received the Inquiry File along with the charge-sheet and other documents and, therefore, he directed for issuing notice to the petitioner and fixing the inquiry. The proceedings of the inquiry dated 23.08.2011, 14.09.2011 and 08.10.2011 goes to show that the inquiry was to be taken up on 14.09.2011 for which notice was issued to the petitioner on 10.09.2011 but there was no service of the notice and, therefore, the Inquiry Officer by calling the competent authority under whom the petitioner was working on his mobile, asked about the whereabouts of the petitioner and it was informed that the petitioner was working under him. However, thereafter without service of notice to the petitioner, the inquiry was fixed on 08.10.2011. It was thereafter adjourned and taken up on 28.03.2012 when again without service of notice to the petitioner the inquiry was taken up, again the Inquiry Officer on the mobile phone sought clarification from the petitioner's Controlling Authority who informed him that the petitioner has been transferred from his office and is not available. Thereafter, records indicate that without issuing proper notice to the petitioner and without hearing him, the entire *ex parte* inquiry was conducted and based on the findings recorded in such an *ex parte* inquiry, the impugned action is taken.

Apart from the fact that the inquiry stands vitiated on account of the fact that it has been done without issuing proper notice to the petitioner, it is seen that while confirming the period of suspension of the petitioner and directing that he shall not be paid any salary apart from the Subsistence Allowance already granted, show-cause notice was not issued to the petitioner and the requirement of Rule 97(3) of the Bihar Service Code has not been followed. Rule 97 of the Bihar Service Code deals with the provision for regularizing the suspension period in cases where proceedings are held against the delinquent employee, Rule 97(1) deals with the case where the employee is dismissed, removed or suspended, Rule 97 (2) deals with the case where the employee is exonerated and Rule 97(3) deals with all other cases which are not covered by Sub-Rule (1) and Sub-Rule (2).

This case would fall under Rule 97(3) and as the judgment rendered by a Bench of this Court in the case of **Ashok Kumar Mishra Vs. State of Bihar- 2003 (1) PLJR 172** contemplates that before taking action under Rule 97(3) and withholding salary the employee has to be heard is a mandatory requirement, on this count also the punishment imposed upon the petitioner is unsustainable.

Keeping in view the aforesaid, this writ petition is allowed and the impugned order dated 27.11.2012 (Annexure-8) quashed.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	31.08.2017
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