

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18737 of 2008

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Shyam Kishore Prasad, s/o Late Shiv Chandra Prasad, r/m-Behind Chitragupta
Nagar, Lohia Nagar, District - Begusarai

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The Secretary, Department of Personnel, Government of Bihar, Patna
3. The Commissioner, Munger Commissioner, Munger
4. The District Magistrate, Begusarai
5. The Enquiry Officer-cum-District Panchayat Raj Officer, Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. JAYANT KUMAR KARN, Adv.
Mr. Hemant Kumar Karn, Adv.

For the Respondent/s : Mr. (GA1)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 03-02-2017

Heard both sides.

The petitioner seeks quashing of the order dated 24.04.2007, as contained in Memo No. 310/Estb. issued under the signature of District Magistrate, Begusarai as well as the appeal, as contained in annexure – 4 by which the Commissioner, Munger confirmed the order of punishment.

Facts which are admitted and relevant for the disposal of this writ petition are that the petitioner was working as Nazir at Bakhari Sub-Division, some irregularities in maintaining the cash book were found and accordingly, the petitioner was suspended vide order dated 02.09.2003, as contained in Memo No. 1100/Estb and departmental proceeding was initiated. In the departmental



proceeding, it was found that the petitioner did not defalcate any government money, but some irregularity was committed in maintaining the cash book and accordingly the following punishments were imposed:-

(1.) The petitioner was debarred from posting as Accountant.

(2.) One increment was stopped with non-cumulative effect.

(3.) The petitioner shall not be entitled to any other allowance save and except the subsistence allowance during the period of his suspension.

Learned counsel for the petitioner submits that in view of Rule 97 of the Bihar Service Code, the disciplinary authority has to give notice to the delinquent before forfeiting the pay and allowance of delinquent during the period of suspension period.

From perusal of provision as contained in Rule 97 of Bihar Service Code, it transpired that where State Government has directed that pay and allowance of period of suspension were to be restricted to subsistence allowance already paid to the employee who was ordered to be reinstated after being awarded minor penalty such as, Censor and stoppage of one increment with non-cumulative effect and the pay and other allowance is not payable for the suspension



period. The delinquent is required to be noticed. This question has already been answered in a case reported in **1988 P.L.J.R. at Page 82 (Shri Mahabir Prasad Vs. The State of Bihar and Others).**

From perusal of the order impugned, it appears that no notice was served on the delinquent for forfeiting his salary and allowance during his suspension period, although, minor punishment was inflicted to him for committing some irregularity. Therefore, the order is not sustainable. Accordingly, the order dated 24.04.2007, of District Magistrate, Begusarai, as contained in Memo No. 310/Estb. and the order passed in appeal confirming the order of the District Magistrate are quashed.

The matter is remitted to the Collector to pass afresh order in accordance with law, after giving notice to the delinquent within three months from the date of presenting this order.

Accordingly, this writ petition is allowed.

(Prabhat Kumar Jha, J.)

Vinita/-

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

