

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19086 of 2008

- =====
1. Yogendra Prasad, s/o Late Bindeshwar Ram, r/o Gardanibagh Alkapuri, Raj Kumar Path, House No. 19 B, Police Station Gardanibagh, District – Patna
 2. Baleshwar Mandal, s/o Late Hirday Mandal, r/v-Korthu, P.S. – Ghanshyampur, District – Darbhanga, presently Parshuram Colony, Sandalpur Road, P.S., - Sultanganj, District – Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Director, Patna Museum, Patna
3. Director, Jan Nayak Karpoori Thakur, Smriti Sangrahalay, Patna
4. Secretary, Art, Culture and Youth Department, Govt. of Bihar, Patna
5. Dy. Secretary, Art, Culture and Youth Department, Govt. of Bihar, Patna
6. Dy. Director, Patna Museum, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ram Chandra Singh, Adv.
Mr. Raj Kishore Prasad, Adv.
Mr. Lal Bahadur Singh, Adv.

For the Respondent/s : Mr. G.P. Ojha, G.A.-7
Mr. Gopal Krishna (AC to GA – 2)
Mr. Sushan Praveen (AC to GA – 2)

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 08-02-2017

Heard Mr. Ram Chandra Singh learned counsel for the petitioners and Mr. Gopal Krishna learned A.C. to G.A.-2.

The petitioners seek quashing of Memo No. 379 dated 26.09.2008, as contained in Annexure-2 by which the two increments of both the petitioners were withheld and at the same time the respondents directed that the petitioners shall not be entitled to get anything during the period of suspension, save and except the subsistence allowance. The petitioners were working, as Pharas in Patna Museum and they were also directed to work as Night Guard.



Theft was committed and for that the petitioners were put under suspension vide order dated 4th October, 2006, as contained in Memo No. 510. The departmental enquiry was held and the Enquiry Conducting Officer recommended for withholding of two increments of the petitioners, but the Disciplinary Authority besides withholding two increments with non-cumulative effect of the petitioners also ordered for non-payment of salary and other allowance during the suspension period.

Learned counsel for the petitioners submits that the petitioners were not at all found guilty of negligence. Of course, minor punishment of withholding two increments with non-cumulative effect was passed, but the petitioners remained suspended for about eighteen months and by withholding the salary and other allowance huge amount of low-paid employees were withheld. The order is against Rule 97 of the Bihar Service Code. The question arises as to whether the order withholding the salary and other allowances of the petitioners during the suspension period is justified.

From perusal of the **Sub-Rule 2 of Rule 97 of Bihar Service Code**, it would appear that in case the government servant has been fully exonerated and if it is found that the suspension is wholly unjustified, the government servant shall be given full pay and allowances for which he would have been posted, as he has not been



put under suspension.

Sub-Rule 3 of Rule 97 of the Bihar Service Code says that in other cases the government servant shall be given only such proportion of pay and allowances as the competent authority may prescribe and for that a notice has to be given to the delinquent.

In the present case, although the charges were not fully proved and the petitioners were not found responsible for theft, but minor punishment by which two increments with non-cumulative effect withheld was passed, besides that the entire salary and other allowance during the suspension period was also withheld. Therefore, in view of the provisions as contained in **Sub-Rule 3 of Rule 97 of the Bihar Service Code**, notice has to be given to the delinquent and thereafter, the authority should pass order for withholding any part of salary and allowance during the suspension period. The Division Bench of this court has held, as reported in **1988 P.L.J.R. at Page 82 (Shri Mahabir Prasad Vs. The State of Bihar and Others)** that in such circumstances, the salary and other allowances during the suspension period could not be held without giving notice to the delinquent and therefore the order as contained in Memo No. 379 dated 26.09.2008 is vitiated and could not be allowed to stand.

Having considered the aforesaid facts and the discussions made above the order dated 26.09.2008, as contained in memo No.



379 contained in Annexure-2 is set aside.

The matter is remitted to the authority concerned to pass order afresh in accordance with law, within two months from the date of receipt of this order. Accordingly, this writ petition is allowed.

(Prabhat Kumar Jha, J.)

Vinita/-

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

