

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.135 of 2016

IN

Civil Writ Jurisdiction Case No. 15687 of 2015

- =====
1. Shailendra Kumar Son of Shri Ramashray kumar resident of village- Bishunpur, Police Station- Begusarai (Town), District- Begusarai.

.... Appellant/s

Versus

1. The State of Bihar
2. The Secretary, Department of water Resources, Government of Bihar, Patna.
3. The Special Secretary, water Resources Department, Government of Bihar, Patna.
4. The Engineer-in-chief, Water Resources Department, Government of Bihar, Patna.
5. The Joint Secretary, Management, Water Resources Department, Government of Bihar, Patna.
6. The Joint Secretary, Engineering, Water Resources Department, Government of Bihar, Patna.
7. The Deputy Secretary, Management, Water Resources Department, Government of Bihar, Patna.
8. The Under Secretary, Management, Water Resources Department, Government of Bihar, Patna.
9. The Chief Engineer, Water Resources Department, Bhagalpur.
10. The Enquiry Officer-cum-Secretary (Technical), Chief Engineer Office, Water Resources Department, Patna.
11. The Executive Engineer-cum- Presenting Officer, Flood Control Division, Naugachhiya, District- Bhagalpur.
12. The Executive Engineer, Irrigation Division, Baunsi, District- Banka.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Indu Bhushan, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-08-2017

Even though various grounds are raised in the appeal,
challenging the order passed by the learned Writ Court in C.W.J.C.



No.15687 of 2015 on 5.10.2015, we find that with regard to the issue of stoppage of two increments with cumulative effect, the learned Writ Court has gone into various aspects of the matter and finding no infirmity in imposition of the aforesaid punishment, the prayer for interfering with the punishment order has been rejected. We see no error in the same warranting re-consideration.

However, during the period when the matter was pending before the disciplinary authority for a period of one year, petitioner was placed under suspension and after the impugned order of punishment was passed, the period of suspension has been regularized by invoking the provisions of Rule 97(3) of the Bihar Service Code by confirming the period of suspension and ordering that petitioner shall not get anything beyond the subsistence allowance already paid. A Division Bench of this Court has considered the aforesaid aspect of the matter in the case of Dinesh Prasad vs. State of Bihar & Ors., 2006(4) P.L.J.R. 514 and it has been held that power to do so under Rule 97(3) of the Bihar Service Code cannot be exercised without giving a separate show cause notice to the delinquent employee, hearing him before passing the order and non-observance of the same vitiates the order.

In the present case, the order passed under Rule 97(3) of the Bihar Service Code withholding salary for the period of



suspension has been done in violation to the aforesaid principle and, therefore, to that extent, the direction as contained in the order dated 11.5.2015, Annexure 37 in the writ petition, stands quashed. However, liberty shall be available to the respondent, if permissible under law, to take action in accordance with law.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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