

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25490 of 2013

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Anil Kumar Yadav, son of Late Radhe Shyam Yadav, resident of Village - Belwa Kamat, Police Station - Purnia Sadar (OP) Ranipatra, Block - Purnia East, District - Purnia at present posted as Panchayat Secretary, Srinagar Block, District - Purnia

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate, Purnia
3. The Sub - Divisional Officer, Purnia Sadar
4. The Block Development Officer, Srinagar, District - Purnia
5. The Block Development Officer, Kasaba, District - Purnia

.... Respondents

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Appearance :

For the Petitioner : Mr. Jitendra Kumar Roy, Advocate.

For the Respondents : Mr. Suresh Kumar, AC to GP-1

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-07-2017

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing the part of the order passed by the District Magistrate, Purnia vide memo no. 411 dated 04.07.2012 in which punishment no. 2 has been imposed for payment of only subsistence allowance, without however grant of any prior opportunity to the petitioner of being heard.

3. Learned counsel for the petitioner makes a short submission to the effect that any adverse order imposing punishment under Rule- 97(3) of Bihar Service Code could not be passed, without first granting an opportunity to the petitioner against the proposed action. He relies on a judgment dated 23.08.2013 passed by a



Co-ordinate Bench of this Court in C.W.J.C. No. 2063 of 2012 (*Kantu Prasad Yadav Vs. The State of Bihar & Ors.*).

4. Learned counsel for the respondents raises a preliminary objection to the effect that an appeal against the impugned order is available under Rule-23 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 but the petitioner has approached this Court without availing of such alternative remedy.

5. Having heard learned counsel for the parties, this Court is of the view that the petitioner need not be relegated to the forum of appeal in a case where violation of the principles of natural justice is complained of. It is well settled that failure of natural justice is one of the recognized exceptions to the ordinary bar of alternative remedy, as held in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, (1998) 8 Supreme Court Cases 1*. A specific stand has been taken in para-18 of the writ petition to the effect that no opportunity of hearing was provided to the petitioner before the impugned order was passed nor even a copy of the enquiry report supplied to him. There is no denial of these facts in the counter affidavit filed on behalf of the respondent nos. 2 and 4. The issue is squarely covered by the judgment in *Kantu Prasad Yadav's case (supra)*, which has taken note of earlier judicial decisions including *M. Gopalkrishna Naidu Vs. The State of Madhya Pradesh, AIR 1968 Supreme Court 240*.

6. The writ petition is accordingly allowed and



punishment no. 2 as contained in the impugned order dated 04.07.2012 (Annexure-1) is set aside with a direction to the District Magistrate, Purnia (respondent no. 2) to pass orders afresh after grant of opportunity of hearing to the petitioner in accordance with law.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
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