

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20636 of 2014

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1. Dilip Kumar Singh Son of Late Ram Parikshan Singh of Village - Rampur Nawsahan, P.S. Industrial Area, Hajipur, District - Vaishali, Ex - Jansevak - Cum - Panchayat Secretary, Ufraul Gram Panchayat, Prakhanad Deshari, District - Vaishali At present Jansevak - Cum - Panchayat Secretary, Prakhand - Patepur, Gram Panchayat Raj, A. Kwahi, P.S. Patepur, District - Vaishali

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj, Government of Bihar, Patna
2. The Director, Panchayati Raj, Government of Bihar, Patna
3. The Secretary, Agriculture, Government of Bihar, Patna
4. The Director, Agriculture, Government of Bihar, Patna
5. The District Magistrate, Vaishali
6. The Deputy Development Commissioner, Vaishali
7. The Deputy Collector - Establishment, Vaishali
8. The District Agriculture officer, Vaishali
9. The Block Education Extension Officer, Deshri, Vaishali
10. The Block Development Officer, Deshri, Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pratik Kumar Sinha
For the Respondent/s : Mr. AC to AG

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 21-11-2017

Heard both sides.

The petitioner seeks quashing of the order dated 15.09.2014, as contained in letter No. 804 (Annexure-17), issued under the signature of District Magistrate, Vaishali by which the District Magistrate, Vaishali appointed Deputy Development Commissioner, Vaishali as enquiry officer to hold fresh enquiry. During the pendency of this writ petition the enquiry officer submitted report and, on such, the Collector, Vaishali inflicted punishment of censure and stoppage of three increments with non



cumulative effect vide order dated 19.05.2017, as contained in memo No. 504 (Annexure-19 of I. A. No. 4344 of 2017). The petitioner also seeks quashing of Annexure-19.

The petitioner was working as Jan Sevak-cum- Panchayat Secretary, Gram Panchayat Raj A Kwahi, Prakhand Patepur, district Vaishali. While the petitioner was working as Panchayat Secretary, he was departmentally proceeded for making illegal appointments of such persons who got less marks. The petitioner was served with memo of charges, as contained in letter No. 663 dated 06.08.2007. The enquiry officer-cum-Deputy Collector (Estb.) Vaishali vide his letter No. 819 dated 18.09.2007 directed the petitioner to file show cause against the memo of charges. The petitioner submitted his reply and thereafter the enquiry officer vide letter No. 616 dated 15.06.2013 (Annexure-16) submitted enquiry report but the Collector on receipt of the enquiry report ordered for fresh enquiry vide order dated 15.09.2014 (Annexure-17).

The learned counsel for the petitioner submits that once the enquiry officer submits report the disciplinary authority gets power under Rule 18 of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as Bihar CCA Rules, 2005) to pass order in accordance with law. Rule 18(1) says that if further enquiry is required and the enquiry officer did not conduct enquiry on any point the disciplinary authority may remit the case to the enquiry officer for holding further enquiry. Sub-rule (2) of Rule 18 envisages that if the disciplinary authority differs with the finding of enquiry officer the disciplinary



authority may record its reason for differing with the finding of enquiry officer on the basis of evidence available on record and cause the same to be forwarded to the proceedee along with enquiry report asking him to submit second show cause. Thereafter, the disciplinary authority is empowered to pass order in accordance with law imposing any punishment.

It is submitted that the disciplinary authority is not at all authorized under the law to order for fresh enquiry differing with the finding of enquiry officer if the report is in accordance with sub-rule 23(ii) of Rule 17. The enquiry officer, during the pendency of the writ petition, submitted his report after holding fresh enquiry and on such the Collector inflicted punishment (Annexure-19). Such enquiry is not at all permissible under Rule 18 of the Bihar CCA Rules, 2005 and thus, the order of punishment is absolutely illegal.

On the contrary, the learned AC to AG submits that during the pendency of this writ petition the disciplinary authority has passed the order of punishment and against the order of punishment the petitioner has got alternative remedy under Rule 23 of Bihar CCA Rules, 2005. Therefore, the writ petition may be disposed of with a direction to the appellate authority to hear the appeal of the petitioner if the petitioner presents his appeal.

I find no substance in the submission of the learned counsel for the State on the simple reason that the Collector, Vaishali, after having received the enquiry report, passed the order for fresh enquiry, which is not at all permissible under Rule 18 of the Bihar CCA Rules, 2005. The



enquiry officer held fresh enquiry and submitted report on such the Collector inflicted punishment of censure and stoppage of three increments with non cumulative effect. Therefore, I find that the punishment passed on such fresh enquiry report is absolutely illegal.

Accordingly, this writ petition is allowed and the order dated 15.09.2014, as contained in letter No. 804 (Annexure-17) and the order dated 19.05.2017, as contained in memo No. 504 (Annexure-19 of I. A. No. 4344 of 2017) are set aside.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.11.2017
Transmission Date	N.A.

