

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8163 of 2014

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1. Madhup Kumar son of Sri Bhagwati Sharan resident of Sri Niwasपुरी, near Sabera Cinema, Barh, Police Station - Barh, District - Patna, presently posted as Marketing officer, Gaya Town, Police Station - Gaya Sadar, District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna
2. The Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna
3. The Joint Secretary, Food and Consumer Protection Department, Government of Bihar, Patna
4. The Special Secretary, Food and Consumer Protection Department, Government of Bihar, Patna
5. District Supply officer, Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Karna
For the Respondent/s : Mr. SC4-Md.Raisul Haque

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

5 03-11-2017

Heard both sides.

The petitioner has filed this writ petition for quashing the order dated 21.01.2013 by which two increments of the petitioner have been stopped with non cumulative effect and it is ordered that save and except subsistence allowance the petitioner would not be paid salary and other allowance during the period of suspension.

The learned counsel for the petitioner submits that the order is non speaking and it does not reflect that the disciplinary authority considered the show cause of the petitioner. The enquiry officer did not find any charge proved against the petitioner. The point of difference, as stated in the second show



cause notice, is based on no evidence. It is further submitted that for stoppage of salary and other allowances, during the suspension period, notice is required under Rule 11 of the C.C.A. Rules, 2005. Even the punishment of stoppage of two increments with non cumulative effect is based on no evidence.

The learned counsel for the State submits that the order is appealable and there is provision of statutory appeal.

On such, the learned counsel for the petitioner submits that petitioner has not preferred appeal as the order is passed in violation of principles of natural justice. The learned counsel for the petitioner placed reliance on the judgement of Apex Court reported in 2009 (2) PLJR SC 59 (Committee of Management v. Vice Chancellor & Ors) in which it is held that if the order has been passed by an authority without jurisdiction or in violation of principles of natural justice, the superior courts shall not refuse to exercise their jurisdiction although there exists an alternative remedy but I am of the view that the order is passed after hearing the petitioner and the petitioner straightway came to this court without exhausting alternative remedy of statutory appeal.

Therefore, I dispose of this writ petition with a direction to the petitioner to prefer appeal before the competent authority within three months from today and the appellate authority shall dispose of the appeal without non suiting the appellant on the ground of delay. This writ petition stands disposed off.

(Prabhat Kumar Jha, J)

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