

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22502 of 2014

=====

Dilip Kumar Pandey, Son of Ram Naresh Pandey, Resident of Village+P.O.-
Anjanakot, P.S.-Motipur, District- Muzaffarpur Petitioner
Versus

1. The State of Bihar.
 2. The Principle Secretary, Social Welfare Department, Government of Bihar ,
Patna.
 3. The Director, ICDS, Social Welfare Department, Government of Bihar, Patna.
 4. The District Magistrate, Muzaffarpur.
 5. The District Programme Officer, Muzaffarpur.
 6. The District Programme Officer, Darbhanga.
 7. The District Programme Officer, Vaishali.
 8. The Child Development Project Officer, Darbhanga (Rural).
 9. The Child Development Project Officer, Saraiya, Muzaffarpur.
- Respondents

=====

Appearance :

For the Petitioner : Mr. Brisketu Sharan Pandey, Advocate and
Mr. Prince Kumar Mishra, Advocate
For the State : Mr. Ajay Kumar, AC to GP 4

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date: 09-01-2018

Heard counsel for the petitioner and the State.

2. On the allegation of demand of illegal gratification, the petitioner was arrested on 29.04.2009 while he was posted as a clerk in the office of Child Development Project Officer, Saraiya, Muzaffarpur. On the basis of the same allegation, he was served with the charge memo dated 17.01.2011 which is Annexure 5 of the writ petition. The petitioner submitted his reply and after conducting a proceeding an enquiry report was served to the petitioner by Annexure 8 dated 04.11.2011. The clear cut findings of the Enquiry officer were that the charges against the petitioner could not be established. That there was no evidence against the petitioner and since the criminal proceedings in the court below were pending, a



conclusion in respect of petitioner's guilt or innocence could be arrived at only after conclusion of the criminal proceedings.

3. The Disciplinary authority has thereafter by Annexure 10 dated 10.02.2014 caused a *de novo* enquiry to be initiated against the petitioner in respect of the same charges. Pursuant thereto, the Enquiry officer has submitted a report dated 01.03.2014 (Annexure 12) in which the petitioner has been held guilty of misconduct under the Service rules. The petitioner objected to the procedure of the second show cause followed by the respondents as being contrary to the CCA Rules, in his reply which he filed on 10.04.2014. He has taken specific ground therein that under the Bihar CCA Rules under which the proceedings were conducted against the petitioner such *de novo* proceeding could not have been directed against the petitioner by the Disciplinary authority when the report to the Enquiry officer was in his favour. He has specifically averred in the second show cause reply that at best under Rule 18 "*further enquiry*" was permissible and no *de novo* enquiry could have been directed. He has further submitted that in the entire proceeding no oral or documentary material has been produced other than pre trap and post trap memorandum and as such the proceeding against the petitioner was vitiated. In view of the nature of the order this Court proposes to pass the matter is being left open to be looked into by the Disciplinary authority. The Disciplinary authority has passed the



order dated 30.04.2014 dismissing the petitioner from service and directed that other than the subsistence allowance nothing be paid to the petitioner for the period of suspension during pendency of the enquiry. Said order which is Annexure 1 of the writ petition shows non consideration of the petitioner's points raised regarding such *de novo* enquiry being violative of the Bihar CCA Rules. Even the appellate authority who has consider the petitioner's appeal against the said order of dismissal has not considered the points raised by the petitioner regarding such *de novo* enquiry being violative of the CCA Rules, specifically Rule 18 thereof.

4. In this connection, this Court would take notice of one judgment dated 10.2.2012, passed by this Court in C.W.J.C.Nos. 842 and 2337 of 2012 (Ram Prit Rai Vs. The State of Bihar and another), wherein this issue has been considered with reference to Rule 18 of the Bihar CCA Rules. Regarding *de novo* enquiry the position of law has been summed up after relying upon the judgment of the Apex Court this Court has held as follows :-

“If the respondents are permitted to hold a de novo enquiry merely because the earlier report was not palatable to them it may be vesting uncanalised and arbitrary powers in a disciplinary authority to continue with the departmental proceeding till such time a report to his satisfaction is not received. This proposition was noticed in (2002) 10 SCC 471 (Union of India v. K.D. Pandey) holding as follows:-

“5.....If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law.....”.

The resolution dated 13.7.2011 initiating de novo enquiry is set aside. The petitioner stands released from suspension and is also held entitled to full salary for the period of suspension.



5. In view of the aforesaid position and in view of the action of the respondent authorities being contrary to the procedure prescribed under the CCA Rules, the impugned order visiting the petitioner with consequence of dismissal from service is not sustainable. The order of the Disciplinary authority dated 30.04.2014 as well as subsequent order of the Appellate authority dated 22.08.2014 are quashed. As the consequence of quashing of the order of punishment, the petitioner would be entitled to consequential benefits leaving it open to the Disciplinary authority to proceed in the matter in accordance with Rule 18 of the Bihar CCA Rules after giving due opportunity to the petitioner.

6. In view of the aforesaid observations and directions, the writ petition is allowed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	16.1.2018
Transmission Date	NA

