

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11091 of 2011

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Shankar Prasad S/O Late Narayan Saw R/O Vill./Mohalla- New Shipara, P.S.-
Beur, Distt.- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary General Administration Deptt., Govt. Of Bihar, Patna
3. The Principal Secretary Social Welfare Deptt., Govt. Of Bihar, Patna
4. The Member, Board of Revenue, Bihar, Patna
5. The Secretary, Child Labour Welfare Commission, Bihar, Patna
6. The Joint Secretary General Administration Deptt., Govt. Of Bihar, Patna
7. The Under Secretary Deptt. of Personnel, Govt. Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Verma, Adv
For the Respondent/s : Mr. Gautam Bose, AAG8

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 14-05-2018

This writ application has been preferred for the
following reliefs:-

“(i) To quash the order contained in memo no.262 dated 01.09.2010 issued by the joint Secretary, General Administration Deptt., Govt. of Bihar, Patna whereby the punishments of censure and withholding of 2 (two) increments non-cumulatively were inflicted upon the Petitioner.

(ii) To quash the order dated 03.05.2011 passed in Service Appeal Case No.05/11 by the learned Member, Board of Revenue, Bihar, Patna whereunder the said appeal preferred by the Petitioner against the order dated 01.09.2010 was rejected.

(iii) To any other relief/reliefs to which the Petitioner is found entitled to in the facts and circumstances



of the case.”

2. It is the case of the petitioner that he belongs to the Cadre of Personal Assistant (P.A) under the State of Bihar and having submitted his joining on 28.07.1988, he had been rendering his services to the respondent State uninterruptedly with all efficiency and integrity under the joint cadre of the secretariat.

3. He has recently retired during the pendency of the writ application on 31.03.2018. It is stated that while the petitioner was working in the office of the Commissioner for Departmental Enquiries, Government of Bihar, Patna, vide the order as contained in Memo No.40 dated 23.03.2009 issued by the Deputy Secretary, Personnel & Administrative Reforms Department, Govt. of Bihar, Patna. He was transferred and posted in the Social Welfare Department, Government of Bihar, Patna. A copy of Memo No.40 dated 23.03.2009 (Annexure-1) has been brought on record to show that the order was made effective forthwith/immediate effect.

4. The petitioner submitted his joining before the Principal Secretary, Social Welfare Department, Government of Bihar, Patna, on 25.03.2009 vide Annexure-2 and on his joining there the Deputy Secretary, Social Welfare Department, Government of Bihar, Patna, issued Memo No.949 dated 28.03.2009 (Annexure-3) by which his joining was accepted with the approval of the Principal



Secretary, Social Welfare Department, Government of Bihar, Patna.

5. Petitioner submits that the marriage of his daughter was fixed in the month of March, 2009, therefore, under some economic pressure and compulsion, he wrote a buff-sheet to the Under Secretary, Personnel Department, Government of Bihar, Patna, on 15.04.2009 under a bonafide belief requesting thereunder to the Under Secretary, Personnel Department, Government of Bihar, Patna, to send his Last Pay Certificate (L.P.C) and the Service-Book paving the way for payment of salary etc. A copy of the note sent by the petitioner to the Under Secretary, Personnel Department, Government of Bihar, Patna, is Annexure-4 to the writ application.

6. The Under Secretary, Personnel & Administrative Department, Government of Bihar, Patna, received the buff-sheet of the petitioner (Annexure-4), thereupon the petitioner was served with Memo No.3346 dated 20.04.2009 calling upon him to submit a clarification with regard to his buff-sheet written on 15.04.2009 and as to how he submitted his joining in the Social Welfare Department without getting relieved in the light of the order dated 23.03.2009 posting the petitioner under the Social Welfare Department. Annexure-5 series is the Memo No.3345 dated 20.04.2009 and Memo No.3346 dated 20.04.2009.

7. The petitioner submitted his reply saying that the



Departmental Enquiries Commissioner, Mr. B.B.Srivastava with whom he was working was already transferred on 29.02.2009 and in his place no officer was posted. In the meantime, he received Order No.40 dated 23.03.2009 by which he was transferred and posted in the Social Welfare Department with immediate effect, he had requested the Under Secretary (Establishment), Personnel Department, to relieve him and in compliance of the Order No.40 dated 23.03.2009 he had joined in the Social Welfare Department. He pointed out that when he was sent back from Revenue Board to Personnel and Administrative Department on 12.06.2008, he had made a written request as well as oral request for relieving him but both the Departments maintained silence and ultimately without being relieved he was compelled to submit his joining in Personnel and Administrative Department within the three days period, in the meantime, when he was on leave was not even accepted by the Revenue Board. The Revenue Board was not told that there is any provision for relieving or not.

8. The petitioner in his response requested vide his letter dated 05.05.2009 (Annexure-6) that an order of relieving with effect from 25.03.2009 may be issued if there is any Rule in this regard. As regard his writing in the buff-sheet, he had replied that it was an official work to send the Last Pay Certificate and by making a request for the same he had not committed any act of indiscipline.



9. It is the grievance of the petitioner that despite of his submission in Annexure-3 series the Special Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna, issued a letter dated 13.07.2009 addressed to the Principal Secretary, Social Welfare Department, Government of Bihar, Patna, requesting him to seek further clarification from the petitioner and to frame memo of charges against him seeking to initiate charges against the petitioner. The petitioner was served with memo of charges vide Memo No.9758 dated 05.10.2009 (Annexure-8).

10. It is further stated that vide Memo No.3944 dated 09.11.2009 issued under the signature of the Deputy Secretary, Social Welfare Department, the services of the petitioner was returned to the Personnel Department with effect from 09.11.2009 (Annexure-9). The petitioner submitted his joining to Personnel Department, Government of Bihar, Patna, on 10.11.2009 and on the same date vide Memo No.279 dated 10.11.2009 issued under the signature of the Under Secretary, Personnel Department, Government of Bihar, Patna, the petitioner was relieved from the Personnel Department enabling him to join Social Welfare Department from the date of issue of the order (Annexure-10). On 11.11.2009 when the petitioner submitted his joining in the Social Welfare Department it was rejected by the Social Welfare Department vide Memo No.4264 dated 30.11.2009 on



the ground that his services have already been returned to the Personnel Department. It is stated that the petitioner was posted by the Personnel Department to the Child Labour Commission under the Labour Department by virtue of the order bearing No.289 dated 19.11.2009, thereupon, he joined on this post on 27.11.2009.

11. In the aforesaid factual background, ultimately the petitioner was inflicted with punishment of censure and withholding of 2 (two) increments with non-cumulative effect contained in Memo No.262 dated 01.09.2010 issued by the Joint Secretary, General Administration Department, Government of Bihar, Patna, (Annexure-11). The petitioner preferred service appeal but the same was rejected vide order dated 03.05.2011 passed by the learned Member, Board of Revenue, Bihar, Patna, (Annexure-12).

12. In the counter affidavit filed on behalf of respondent nos.2, 6 and 7 a stand has been taken that the respondents took serious view of the petitioner's conduct in writing the buff-sheet for his Last Pay Certificate which was an act of indiscipline on the part of the petitioner. It is stated that the explanation submitted by the petitioner to the Department was not acceptable and even before the matter could have reached to a conclusion the services of the petitioner was returned to the Personnel and Administrative Reforms Department, Government of Bihar, Patna, (now General Administrative



Department) on 09.11.2009. Pursuant to this the petitioner submitted his joining to the General Administrative Department on 10.11.2009 and during the period of waiting for posting the petitioner taking shelter of Memo No.279 dated 10.11.2009 (Annexure-10) to the writ application once again submitted his joining in the Social Welfare Department knowing fully well that the later had returned his services on 09.11.2009 and he was waiting for posting from Social Welfare Department in the Personnel and Administrative Reforms Department/General Administrative Department. It is submitted that Memo No.279 dated 10.11.2009 was issued with reference to office Order No.40 dated 23.03.2009 whereby the petitioner was transferred to Social Welfare Department from Personnel and Administrative Reforms Department, Government of Bihar, Patna, and it was fully known to the petitioner and, therefore, he committed another act of indiscipline.

13. In this rejoinder to the counter affidavit it is stated that the Under Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna, was in the know of the fact that the petitioner had submitted his joining on 25.03.2009 a copy thereof was served to the said Under Secretary containing prayer to relieve him. Despite conscious knowledge on the part of the said Under Secretary, Personnel Department, at the very early stage no



step whatsoever was taken by him for issuing the relieving order but only belatedly after about 7 ½ months he chose to issue an order contained in Memo No.279 dated 10.11.2009. The said Memo No.279 dated 10.11.2009 was issued close on the heels of the order contained in Memo No.3944 dated 09.11.2009 issued by the Under Secretary, Social Welfare Department. It is submitted that the counter affidavit seeks to ignore and skip over the issue of acceptance of joining by the Social Welfare Department by virtue of Memo No.949 dated 28.03.2009. He submitted that for the petitioner it was very disturbing to see that on the one hand the Social Welfare Department accepted the joining of the petitioner and issued order on 28.03.2009 but at the same time, the Department framed memo of charge dated 26.08.2009 at the behest of General Administrative Department knowing fully well that the petitioner had forwarded the copy of his joining to the Personnel Department to relive him. It is submitted that in case a relieving order was required to be issued the Personnel Department could have issued such order between 25.03.2009 and 28.03.2009 but that was not done.

14. Having heard learned counsel for the petitioner and learned counsel representing the State, I find that the petitioner was transferred and posted in the Social Welfare Department vide order dated 23.03.2009 and pursuant thereto the petitioner had submitted his



joining on 25.03.2009 which was accepted by the Social Welfare Department without requiring the petitioner to submit any relieving order. It is the case of the petitioner that he had forwarded a copy of his joining letter dated 25.03.2009 to the Personnel and Administrative Reforms Department but no relieving order was issued between 25.03.2009 and 28.03.2009. Earlier also joinings were being accepted without requiring a formal relieving order. In this case the Principal Secretary of Social Welfare Department had approved his joining vide office order dated 28.03.2009. One of the Departments of the Government says that a relieving order was required but at the same time another Department of the same Government accepts the joining without any relieving order and this made a ground for one of the Department of the Government to ask another Department to frame the memo of charge. This is a peculiar situation which this Court is unable to appreciate and accept.

15. The Court is keeping in mind that in the matters which are there in the domain of the employer normally the Court is not required to interfere with the minor punishments imposed by the employer, however, the Court definitely required to test the allegation of arbitrariness and unreasonableness in the decision making process of the employer, if brought to the notice of this Court. In appropriate cases where the decision making process is found to be arbitrary it



would be its constitutional duty to interfere with such arbitrary decisions. In the facts and pleadings available on record to this Court it seems to be more a case of ego satisfaction on the part of the respondents in the Personnel and Administrative Reforms Department, as they received a buff-sheet of the petitioner on 15.04.2009 requesting them to send his Last Pay Certificate and the Service Book to the Social Welfare Department where he had already joined on 25.03.2009.

16. The fact that the petitioner was posted with Sri. B.B.Srivastava, the Departmental Enquiry Commissioner, who had already been transferred on 29.02.2009 and thereafter no posting was done on his place, as soon as the petitioner received the order of transfer stating that the transfer shall be with immediate effect, he submitted his joining on 25.03.2009 in the Social Welfare Department with a copy thereof to the Personnel and Administrative Reforms Department, no objection whatsoever was raised by the Personnel and Administrative Reforms Department and no relieving order was issued. It has taken 7 ½ months on the part of Personnel and Administrative Department in issuing a relieving order. The joining of the petitioner was accepted in the office of the Principal Secretary, Social Welfare Department which is evident from Memo No.949 dated 28.03.2009 with approval of the Principal Secretary. The



acceptance of joining in the Social Welfare Department and issuance of order (Annexure-3) on 28.03.2009 clearly indicates that the petitioner was not called upon to submit any relieving order from the Personnel and Administrative Reforms Department. The petitioner has cited examples that earlier also in the year 2008 when he was transferred to the General Administrative Department from the Board of Revenue, he was not given any relieving order and even though he was on leave for three days when the transfer order came, the Board of Revenue did not allow him that three days period as leave and the petitioner had to suffer in terms of monetary loss.

17. The petitioner has explained the reason for writing the buff-sheet because there was a marriage of his daughter in the month of March and because of the financial constraints he was looking for timely payment of salary etc in the Social Welfare Department which would not have been possible in absence of the Last Pay Certificate and the Service-Book. In the opinion of this Court these were not such acts and omissions for which the petitioner was required to be proceeded against in the manner things have proceeded thereafter. The initiative of the Personnel and Administrative Reforms Department, to frame charge against the petitioner for these reasons was not justified.

18. In the present case I find that even though the



petitioner has retired from service but because of the impugned orders he has been losing some monetary benefits on account of 2 (two) increments which were withheld with non-cumulative effect.

19. In the facts and circumstances of the case, the charges framed against the petitioner in ‘Prapatra-K’ and the punishment imposed vide Annexure-11 to the writ application cannot be allowed to sustain. Those impugned orders are, accordingly, set-aside and the writ application is allowed. The respondents are directed to pay the petitioner all consequential benefits which the petitioner has been deprived of because of Annexure-11, within a period of two months from the date of receipt/production of a copy of this order.

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	
CAV DATE	
Uploading Date	19.05.2018
Transmission Date	

