

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5561 of 2014

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Suman Kumar Son Of Late Ram Sevak Yadav Resident Of Village - Kasma Bharar,
Police Station - Khajauli, District - Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar Through The Divisional Commissioner, Munger Division, Bihar
2. The Divisional Commissioner, Munger Division, Bihar
3. The District Magistrate, Begusarai, Bihar
4. The Managing Director, District Rural Development Authority, Begusarai, Bihar
5. The Additional Collector-Cum-Conducting Officer, Begusarai, Bihar
6. The Circle Officer-Cum-Presenting Officer, Begusarai, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Ajay Kumar, Advocate
For the State : Mr. Manoj Kumar, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 20-07-2018

Heard learned senior counsel for the petitioner as also
learned counsel appearing on behalf of the State.

2. The writ petition has been filed challenging the notice issued to the petitioner in purported exercise of Rule 28 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Bihar CCA Rules, 2005'). The notice was issued on 17.02.2014. The Commissioner, Munger Division has issued the notice in purported exercise of Rule 28 of the Bihar CCA Rules, 2005 to revise the punishment of withholding of five annual



increments with cumulative effect, earlier granted to the petitioner.

3. Challenge was made on the ground that the decision in the revisional jurisdiction was *prima facie* without any application of mind by the authority since the orders have been passed on the premise that the punishment of withholding of five annual increments with cumulative effect was a minor punishment.

4. Referring to the provisions contained in Rule 14 of the in Bihar CCA Rules, 2005, the learned senior counsel has submitted that even withholding of five annual increments with cumulative effect was a major punishment. Therefore, the basic premise for exercise/invocation of revisional jurisdiction under Rule 28 was without any application of mind and is unsustainable in law.

5. The other aspect of challenge to the exercise of revisional jurisdiction is that though the order of punishment of the District Magistrate (Disciplinary Authority) is dated 18.05.2013, the revisional jurisdiction has been invoked on 17.02.2014 i.e., beyond the period of limitation prescribed for invoking jurisdiction under Rule 28 which allows the authority to exercise jurisdiction under Rule 28 within a period of six months from the date of order which he purposes to revise.

6. The date of the order purposed to be revised in the



instant case is 18.05.2013. The notice under Rule 28 was issued on 17.02.2014. It is clear that the notice has been issued beyond the period prescribed under Rule 28. The provision of the Bihar CCA Rules, 2005 mandates that the revisional jurisdiction is to be exercised within six months and that too in a case where the authority considers it appropriate to revise the punishment for some cogent reasons. The period of six months prescribed under the Bihar CCA Rules, 2005 is subject to relaxation by the authorities under rule 29 of the same rules.

7. Rule 29 provides that the competent authority under the rules may make any order after condoning delay in exercise of jurisdiction in accordance with the rules but only for “good and sufficient reasons.”

8. In the instant case no reasons whatsoever has been assigned for invoking the revisional jurisdiction after the delay. As regards the reasons considered for revising the order, *prima facie* the same are not sustainable in as much as the premise on which the revisional authority has proceeded is that award of punishment of withholding of five annual increments with cumulative effect was a minor punishment.

9. As noticed hereinabove, withholding of five annual increments with cumulative effect is itself a major punishment and not



a minor punishment. The effect of withholding of five annual increments with cumulative effect will have civil and penal consequences throughout the service career against whom punishment is imposed. The same is clearly a major punishment in terms of the provisions of the rules as also in terms of it's effect in the service career of the petitioner. The order purporting to invoke revisional jurisdiction under Rule 28 is therefore, clearly in contravention of aforesaid two provisions of the Bihar CCA Rules, 2005, mainly Rules 28 and 29.

10. This Court is therefore, not satisfied with the reasons for, as also the manner of the invocation of revisional jurisdiction by the Revisional Authority leading to issuance of enhanced/revised order of punishment which has been challenged by way of Interlocutory Application. The order is dated 06.03.2014 which has been communicated to the petitioner on 26.05.2014 under the signature of the District Magistrate, Begusarai purporting to dismiss the petitioner from the service.

11. Such exercise of the revisional jurisdiction by the authorities is prejudicial to the petitioner having such grave civil consequences. It is trite law that powers of any authority under the statutory Rule, is to be exercised in the manner prescribed by the Rule



which confers the power on the Statutory Authority. All other modes of exercise of jurisdiction stands expressly prohibited. This legal position stands settled based on a legal maxim *expressio unius est exclusio alterius*. In this respect law is very clear. This Court would refer to the decision in the case of **J. Jayalalitha & Ors vs. State of Karnataka** reported in (2014) 2 SCC 401 as also recent judgment of this Court in the case of **Pramod Kumar Drolia vs. Bihar State Electricity Board** reported in 2014(2) PLJR 270.

12. The order of dismissal communicated to the petitioner under order dated 26.05.2014 issued by the District Magistrate is hereby quashed. As a result of quashing of the order dated 26.05.2014, the petitioner would be reinstated in the service.

13. Learned senior counsel appearing on behalf of the petitioner has also submitted that the original order of punishment withholding five annual increments with cumulative effect has also been challenged now by filing the Interlocutory Application No. 5284 of 2018. The petitioner chose not to prefer any appeal against the said order of punishment. The conduct of the petitioner was clear to the extent that he had accepted the punishment by way of withholding of five annual increments with cumulative effect. Even otherwise the prayer made by the petitioner by filing an Interlocutory Application



now in this proceeding which was admitted way back in the year 2014 is antithesis to the very submission made by the petitioner regarding invocation of the revisional jurisdiction after delay, since the petitioner, if aggrieved by order of punishment dated 18.05.2013 was required to file his appeal within 45 days under Rule 25 of the Bihar, CCA Rules, which admittedly has not been done. In absence of challenge to the original order of punishment dated 18.05.2013, the petitioner as noticed herein, petitioner cannot be allowed to challenge the same at such a belated stage, that also after choosing not to avail statutory remedy of appeal.

14. In view of the aforesaid consideration, this Court at such a belated stage when the petitioner has chosen not to prefer any appeal against the order of punishment of withholding of five annual increments with cumulative effect is not inclined to allow the petitioner's prayer to enable him to challenge the initial order of punishment issued by the District Magistrate.

15. Interlocutory Application No. 5284 of 2018 it therefore, rejected.

16. Counsel for the respondent State at this stage has urged that liberty may be granted to the respondents to initiate proceeding under revisional jurisdiction afresh.



17. This Court would only observe that procedure for invoking revisional jurisdiction has been specified in the Bihar CCA, Rules 2005. Liberty of the authorities would needless to say be limited to the scope and manner of invoking revisional jurisdiction specified under the same.

18. The writ petition is allowed in the terms indicated hereinabove.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

