

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11240 of 2017

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Raj Kishore Sinha, S/o Late Chandrika Prasad Sinha, R/o Mohalla- Rasikpur,
P.O.- Dumka, P.S.- Dumka, District- Dumka (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, R.C.D., Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Commissioner-cum-Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Joint Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Government of Bihar, Patna.
6. The Executive Engineer (Monitoring), Road Construction Department, Government of Bihar, Patna.
7. The Senior Project Engineer, Bihar State Bridge Construction Corporation Ltd., Works Division, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli
For the Respondent/s : Mr. Amit Prakash-Ga13

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 18-05-2018

The petitioner by way of the present writ petition has sought quashing of order dated 31.03.2016 issued by the Respondent No. 2 whereby and whereunder the punishment of permanent reduction of pay to the lowest stage in time scale of pay of Junior Engineer has been inflicted on the petitioner herein as well as it has been directed that the petitioner would be entitled for next increment of lowest stage of pay after



14.10.2006. It was further directed by the impugned order dated 31.03.2016 that for the suspension period, the petitioner would not be entitled to any other allowances or benefits except the subsistence allowance.

2. The short facts of the case are that the petitioner was initially appointed as Junior Engineer on 15.01.1988 in the Public Works Department (P.W.D), which is now known as Road Construction Department and later on, the services of the petitioner was sent to the Rural Development Department, Government of Bihar. At a time, when the petitioner was posted as Junior Engineer in the Rural Development Department and was posted in the office of the Block Development Officer, Sherghati, Gaya, in the year 2002, a project was floated for the construction of two rooms of primary school, Palakia, Sherghati, Gaya and the petitioner was directed by the B.D.O., Sherghati, Gaya to assess the progress of the ongoing construction work of the said school building, though, the construction work of the school was being done by the Department itself through Mr. Surya Kumar Sinha, Block Statistical Supervisor, Sherghati, Gaya, who had made an application to the B.D.O. for release of fund to the



tune of Rs. 1,00,000/- for clearing the existing liabilities against the work done and for further execution of the construction work whereupon the petitioner was instructed to assess the ongoing work on account of the technical supervision and the in-charge of the work being on leave. The petitioner had inspected and assessed the work done on the site and reported on 20.02.2003 that approximately work worth Rs. 70,000/- had already been done, hence, an amount of Rs. 1,00,000/- may be released. Thereafter, it appears that upon complain with regard to the irregularity being committed in the construction work of the said school, an inquiry was conducted by the Executive Engineer, Gaya, and he submitted a report dated 12.03.2004, perusal whereof would show that the petitioner was nowhere in the picture. Nonetheless, the petitioner was suspended by memo dated 21.09.2005, whereafter, a departmental proceeding was initiated by Memo dated 29.10.2005 and the petitioner was served with the charge-sheet on the following allegations:-

- (i) while the petitioner was posted at Sherghati division, he did not assess the work done properly as a result whereof on his recommendation, a sum of Rs. 1,00,000/- by way of advance was given



to Shri Surya Kumar Sinha. It has been alleged that several discrepancies were found in the construction work of the said building upon an inspection being made on 13.02.2004.

(ii) It has been alleged that the petitioner had engaged in gross irregularities and had recommended for payment of advance amount ignoring the estimate and its technical aspects.

(iii) It has been alleged that though virtually no work of brick soling in the foundation work or RCC costing work had been done, but still the petitioner had recommended that work worth Rs. 70,000/- has been completed, hence, a sum of Rs. 1,00,000/- be given for future work, which indicates that the petitioner had conspired with others to misappropriate the Government money.

3. The petitioner had then participated in the inquiry proceeding and the Inquiry Officer by the inquiry report dated 21.01.2006 had found the charges to have not been proved against the petitioner herein and the petitioner was exonerated by the Inquiry Officer. Thereafter, a second show cause notice dated 03.07.2006 was issued against the petitioner herein, to which the petitioner had filed a reply and thereafter, the order of punishment dated 14.10.2006 was passed whereby and



whereunder the petitioner was inflicted with the following punishments:-

(i) Reduction of the petitioner to the lowest stage in time scale of pay.

(ii) For the period of suspension, the petitioner shall not be admitted to any other allowances then what has already been paid to him on the post of Junior Engineer.

4. The petitioner had then challenged the aforesaid order of punishment dated 14.10.2006 as also the initiation of the departmental proceeding and the second show cause notice by filing a writ petition bearing C.W.J.C. No. 12750 of 2007 and the same was dismissed by the learned Single Judge by an order dated 21.01.2015 whereafter a civil review application was filed by the petitioner herein, but the same was also dismissed by an order dated 12.08.2015.

5. The aforesaid order of the learned Single Judge dated 21.01.2015 as also the order of review dated 12.08.2015 was challenged in appeal in L.P.A. Nos. 1710 of 2015 and 1711 of 2015 and the learned Division Bench of this Court by a judgment dated 27.01.2016 passed in the aforesaid L.P.A. Nos. 1710 of 2015 and 1711 of 2015 held as follows:-



“13. Upon careful reading of Rule 14(iv) of Rules 2005, it would transpire that reduction to a lower scale in the time scale of pay for a period not exceeding three years, without cumulative effect, can be imposed upon a Government servant, which is a minor penalty. Rule 14 (vii) of the said Rules 2005 prescribes penalty of reduction to a lower stage in the time scale of pay for a specified period, with further direction as to whether or not he would earn increments of pay during such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay; save as provided for under Rule 14(iv), as a major punishment.

14. In the present case, punishment of reduction to lowest stage in time scale of pay without specifying any period as contemplated under Rule 14(vii) of the Rules of 2005 has been passed, which is not provided under the Rules of 2005. Further, though it is within the jurisdiction of the competent authority to make specific order as regards pay and allowances to be paid to the Government servant for the period during which he remained under suspension, a separate order is required to be made, in this regard, under Rule 97 of the Bihar Service Code.

14. In view of the above, the order, imposing punishment upon the appellant, dated 14.10.2006, (Annexure-3) and subsequent order, dated 07.03.2007, rejecting a representation, made by the appellant against imposition of punishment, requires interference.

15. We, accordingly, set aside the said orders, dated 14.10.2006, and 07.03.2007. The matter stands remanded back to the disciplinary authority/respondents to take a



decision afresh on the question of imposition of punishment in terms of Rule 14 of the Rules of 2005 . The competent authority shall retain liberty to press for a separate order in terms of Rule 97 of the Bihar Service Code on the question of payment to the appellant for the period during which he had remained under suspension.

16. The orders, under appeal, passed by a learned single Judge, are, accordingly, set aside.

17. In the result, these appeals are partly allowed with the direction, aforesaid but without any costs.”

6. In nutshell, the order of punishment dated 14.10.2006 and the subsequent order dated 07.03.2007 was quashed and set aside on the ground that the punishment of reduction to the lowest stage in time scale of pay without specifying any period as contemplated under Rule 14 (vii) of the Rules, 2005 is not provided for under the Bihar Government Servants (C.C.A) Rules 2005 and no separate order under Rule 97 of the Bihar Service Code has been made with regard to pay and allowances to be paid to the petitioner herein for the period during which he remained under suspension.

7. In pursuance to the aforesaid judgment dated 27.01.2016 passed in L.P.A. Nos. 1710 of 2015 and 1711 of 2015, the Principal Secretary, Road Construction Department,



Government of Bihar has passed a fresh order of punishment dated 31.03.2016 whereby and whereunder the same punishment, as imposed vide order dated 14.10.2006 and quashed by the learned Division Bench of this Court by a judgment dated 27.01.2016, has been inflicted upon the petitioner.

8. The learned counsel for the petitioner has submitted that it appears that the Principal Secretary, Road Construction Department, Government of Bihar while passing the impugned order dated 31.03.2016 has neither applied his mind nor honoured the judgment dated 27.01.2016 passed in the earlier case of the petitioner by the learned Division Bench and in a mechanical and unintelligent manner has inflicted the same punishment as was inflicted by the earlier order dated 14.10.2006, which has already been quashed and found to be untenable in the eyes of law.

9. It is submitted that the aforesaid averments have been made by the petitioner in Paragraph No. 39 of the writ petition and the same has not been denied by the respondents in their counter affidavit, hence, it is an admitted position that the Disciplinary Authority, only with a view to harass the



petitioner herein, has inflicted the impugned order of punishment dated 31.03.2016, in defiance of the judgment of the learned Division Bench dated 27.01.2016, which is not only contemptuous, also amounts to overreaching the process of the Court.

10. Per contra, the learned counsel for the Respondents has submitted that after the learned Division Bench quashed the order of punishment dated 14.10.2006, a fresh order of punishment dated 31.03.2016 has been passed, which is in consonance with the Rules, 2005.

11. At this juncture, the learned counsel for the petitioner has relied upon a judgment reported in *AIR 1966 SC 951 (R. Jeeva Ratnam vs. the State of Madras)*, to contend that the order of punishment cannot be passed from a retrospective date. The learned counsel for the petitioner has also relied on a judgment of the Hon'ble Apex Court, reported in *2014 (2) PLJR 458 (SC) (State Bank of Patiala and Ors. Vs. Ram Niwas Bansal (Dead) through L.Rs)* to contend that the order of punishment cannot be retrospective and the same has always to be prospective.



12. For the reasons mentioned hereinabove as also the fact that the impugned order dated 31.03.2016 is ad verbatim the punishment order dated 14.10.2006, which was quashed by a learned Division Bench of this Court by a judgment dated 27.01.2016 on the ground that the punishment of reduction to the lowest stage in time scale of pay is de hors the Rules of 2005 since the same does not specify any period as also for the reason that no separate order with regard to pay and allowances to be paid to the petitioner herein for the period during which he remained under suspension has been passed under Rule 97 of the Bihar Service Code, this Court is left with no option but to hold that the impugned order of punishment dated 31.03.2016 is not only vitiated and untenable in the eyes of law, but also has been passed in teeth of the judgment of this Court dated 27.01.2016 passed by the learned Division Bench in L.P.A. Nos. 1710 of 2015 and 1711 of 2015, hence, contemptuous and amounts to not only overreaching the process of the Court, but also amounts to abuse of the process of the Court, hence, the impugned order of punishment dated 31.03.2016 passed by the Principal Secretary, Road Construction Department, Government of



Bihar is quashed and set aside, however, without any liberty to the respondents to proceed further in the matter.

13. The writ petition is allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	17.04.2018
Uploading Date	18.05.2018
Transmission Date	

