

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12349 of 2005

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Mahanand Mehra, son of late Tilak Mehra, Resident of Mohalla Mihijam, P.O. and P.S. Mihijam, Dist. Jamtara.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary Bihar, Old Secretariat, Patna.
2. The Commissioner and Secretary, Finance (Commercial Taxes) Department, Bihar, Patna.
3. The State of Jharkhand through Commissioner cum Secretary, (Commercial Taxes) Department, Ranchi.

.... Respondent/s

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Appearance :

For the Petitioner/s : None

For the Respondent/s : Mr. Dhruv Mukherjee, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-02-2018

In this case, no one appears for the petitioner nor for the State. Counsel for the State of Jharkhand is present.

As repeatedly, learned counsel for the petitioner has remained absent, having no way out, this Court is disposing of the matter on the basis of material available on record.

In the present case, the relief has been sought for quashing the Notification No. Con/V-101/99 (Part) 366 dated 31.5.2015 (Annexure-3), whereby and whereunder following punishments have been awarded to the petitioner:-

(a) 10% cut in pension,

(b) No salary during the period of suspension from
6.3.1999 to 31.1.2003 except subsistence allowance,



- (c) For realization of the loss of the State Government which is being estimated by the Government of Jharkhand,
- (d) To transfer the matter to the State of Jharkhand for passing fresh order as the services of the petitioner was transferred to the State of Jharkhand as early as 11.9.2003 (Annexure-2) and
- (e) For direction to the State of Bihar to release his retrial dues such as gratuity, leave encashment and full pension.

The fact of this case is that the petitioner was a member of the Bihar Finance Service, was put under suspension for alleged misconduct vide Memo No. 400 dated 6.3.1999. The departmental proceeding was initiated in terms of Rule 55 of the Civil Services (Classification, Control & Appeal) Rules vide Memo No. 1045 dated 26.5.1999. After holding enquiry, the enquiry officer submitted its enquiry report dated 27.11.2001 but, no order was passed by the State of Bihar till 31.5.2005. In the meantime, the services of the petitioner was allocated in the State of Jharkhand vide notification no. 4841 dated 11.9.2003. The impugned order has been passed on 31.5.2005.

The only issue has been raised by the petitioner that as the petitioner was finally allocated the State of Jharkhand, he did not



remain an employee of the State of Bihar and, as such, the State of Bihar does not have a jurisdiction to pass any order of punishment against him. Only the power of awarding punishment lies with the State of Jharkhand. The fair procedure would have been that the State of Bihar should have transferred the whole record of the departmental proceeding to the State of Jharkhand and it is the State of Jharkhand which could have passed the order but, instead of following this procedure, the State of Bihar has passed the order of punishment passed against the petitioner which is nullity. In that view of the matter, the order passed against him has vitiated and requires interference by this Court.

In the present case, admittedly, the order of punishment has been passed on 31.5.2005 though the proceeding was initiated and enquiry was completed before his allocation/transfer to the State of Jharkhand. In such a situation, the State of Bihar should have refrained to pass order against the petitioner. Instead of that, the records, relating to departmental proceeding with respect to the petitioner, should have been transferred to the State of Jharkhand. It is the State of Jharkhand which could have passed the order against the petitioner. The petitioner is correct in his stand that after the allocation of services to the State of Jharkhand, the relationship of master and servant was not in existence and, in absence of the same, no order can



be inflicted upon him.

In that view of the matter, the order inflicting punishment contained in Notification No. Con/V-101/99 (Part) 366 dated 31.5.2005 (Annexure-3) is set aside and this Court directs the State of Bihar to remit the records of the departmental proceeding of the petitioner to the state of Jharkhand and also direct the State of Jharkhand that, on receipt of the record, it will pass necessary disciplinary orders against the petitioner looking to the facts and circumstances of the case including the gravity of the charges leveled against the petitioner.

With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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