

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5586 of 2013

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DR. DEOVRAT NARAYAN SINGH SON OF LATE UDIT NARAYAN
SINGH R/O - MOHALLA BHOJPUR COLONY, ASHOK NAGAR, ROAD
NO. 8, KANKARBAGH, P.S. KANKARBAGH, DIST. - PATNA

... .. Petitioner/s

Versus

1. The State Of Bihar Through Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary Department Of Health, Government Of Bihar, Patna
3. The Additional Secretary, Department Of Health, Government Of Bihar,
Patna
4. The Deputy Secretary Department Of Health, Government Of Bihar, Patna
5. The Director, Indigenous Medicine, Department Of Health, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Prabhat Kishore
For the Respondent/s : Mr. NEERAJ NANDAN

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 09-01-2018

This writ petition under Article 226 of the Constitution of India has been filed for setting aside the order dated 29.01.2013 passed by the State Government as well as enquiry report dated 19.01.2012 by which petitioner has been awarded punishment of Nindan, stopping of three increments with cumulative effect and no salary would be payable for the period he remained in jail.

Briefly stated facts of this case is that petitioner went on casual leave for family work from 13.10.1993 till 17.10.1993 and thereafter college was closed on the eve of Durga Puja vacation and being clinical side teacher petitioner joined roster duty on 27.10.1993. While petitioner was on leave one of his native Mr. Jagarnath Tripathi, who was on inimical terms on account of



knowing the facts that petitioner was going to be handed over charge of Dy. Director (Indigenous Medicine) provoked petitioner for doing criminal act but the petitioner only defended himself then he lodged a false criminal case against petitioner and petitioner went in judicial custody on 14.10.1993. The news was also published in two news papers on 15.10.1993.

The aforesaid criminal case was tried in the court of learned A.D.J.-II, Patna and petitioner was acquitted vide order dated 20.05.1999. Mr. Tripathi took the help of other persons for raising malicious allegation against him and compelled the Department of Health to take any action against him and wrote a letter to the Hon'ble Chief Minister on 24.05.2007 and on the basis of said letter Dy. Secretary of Chief Minister's Secretariat asked the Principal Secretary to the Health Department vide letter dated 29.06.2007 to initiate a departmental proceeding against the petitioner and in pursuance thereof the then Secretary of the Health Department asked to show cause vide letter 19.11.2007 on the basis of allegation raised by the MLA.

Petitioner submitted his reply on 26.11.2007 stating therein that the show cause had been asked after fourteen years of incident and he has been acquitted by the court of law. As such, no case for initiation of departmental proceeding is made out. In spite of



submission of said reply petitioner was again served a show cause vide letter dated 15.02.2008 and petitioner informed vide letter dated 19.02.2008 that he has already submitted his reply.

The Department vide its notification dated 11.09.2009 informed that period between 14.10.1993 to 20.10.1993, during judicial detention, he would be deemed to be under suspension under Section 99 of the Bihar Service Code. Thereafter, another show cause was issued vide letter dated 11.09.2009 asking petitioner as to why he did not inform immediately about his judicial detention from 14.10.1993 to 20.10.1993 and petitioner submitted his reply vide letter dated 18.09.2009 that the authorities had knowledge about detention of the petitioner in judicial custody and at the relevant time petitioner was on casual leave from 13.10.1993 to 15.10.1993 and thereafter, college was closed on the eve of Durga Puja vacation. The department vide resolution dated 29.11.2010 initiated a departmental proceeding against petitioner and Shri Bihari Das was appointed as an enquiring officer and petitioner again submitted his explanation with respect to his judicial custody. It is also stated that he was acquitted and , as such, he was entitled for salary for the said period spent in judicial custody.



The Joint Secretary of the department framed charges on 26.11.2010 stating therein that petitioner had concealed the facts that he was in judicial custody and got salary for seven days by submitting an application for casual leave. Petitioner submitted his reply by letter dated 10.12.2010 stating therein that he never concealed any fact and all including the Principal of the college were aware and he was granted his casual leave prior to involvement in a criminal case. By letter dated 01.06.2011 the enquiry officer, Shri Vivekanand Thakur asked to produce all relevant documents on 09.06.2011. Petitioner by his letter dated 23.06.2011 informed the enquiry officer that he has already submitted the written statement and prayed for extension of the date of his appearance on 09.06.2011 as he was informed too late with respect to his appearance before the enquiry officer. Subsequently, by order dated 22.11.2011 Shri Rajendra Prasad Jha was also appointed as enquiry Officer by resolution dated 29.11.2010 and petitioner appeared before the Enquiry Officer on 29.11.2011 and submitted his written statement and next date of hearing was fixed on 05.01.2012. The Joint Secretary of the Health Department vide letter dated 16.07.2002 asked for second show cause on the basis of enquiry report from the petitioner



within fifteen days. As enquiry report was not given then petitioner vide letter dated 17.07.2012 requested the Joint Secretary, Health Department, to provide him the enquiry report and petitioner after receiving enquiry report submitted his reply by letter dated 17.08.2012. In his reply he has submitted that his immediate controlling authority i.e., Principal of the college had full knowledge about his judicial custody and he met petitioner in jail. He was granted casual leave before his judicial custody for three days, so he without asking show cause paid full salary to the petitioner. The disciplinary authority imposed punishment to the petitioner (1) Nindan, (2) stoppage of three increments with cumulative effect (3) no salary would be payable for judicial custody and salary for that period be realised from the petitioner.

It has been submitted by learned counsel for the petitioner that after his acquittal from the criminal charge he was entitled for full salary for the said period. It has further been submitted that petitioner had been on casual leave at the time of his judicial custody and before his joining on duty he had been released on bail, so he cannot be said to be absent from service on account of judicial custody. It has further been submitted that departmental proceeding has been initiated after a lapse of 18 years for



extraneous reason and malafide intention and, as such, order of punishment is sought to be quashed.

It has further been submitted that two punishment orders cannot be imposed in a single departmental proceeding and the second punishment being major cannot be imposed without following the procedure envisaged under the Rules. It has further been submitted that since the misconduct is eighteen years old and authorities were aware of the said incident, it will be deemed that for such misconduct no punishment could be imposed and same has been condoned.

After hearing both the parties, this Court finds that there is no provision of inflicting two punishments in a single departmental proceeding and disciplinary authority cannot impose punishment as provided under Rule 11 of the C.C.A. Rules 2005. It is also admitted fact that petitioner has been acquitted in 1999 itself against criminal charges and , as such, he was entitled for full salary for the period he was in judicial custody. It has also been found that prior to three days he was granted casual leave on 13.10.1993 and remained in judicial custody from 14.10.1993 to 20.10.2013 and subsequently joined his post. It is true that petitioner was obliged to inform about his judicial custody to the controlling authority and the same amounted to misconduct , for



which proceeding was initiated against him and he has been inflicted two punishments which is not sustainable in the eye of law. As such, order of punishments, as contained in Annexures-1 and 2 are set aside and the matter is remitted back to the disciplinary authority to pass a fresh order of punishment in accordance with law.

Writ petition stands allowed to the extent indicated above.

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	

