

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10890 of 2014

Sanjay Kumar, S/o Late Shri Mohan Lal aged about 46 years resident of
Chaitola, Kadamkuan, P.S. Kadamkuan, Dist. Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Labour Resource Department, Bihar, Patna.
2. The Director, Employment and Training Labour Resource Department, Bihar, Patna.
3. The Joint Director, Employment and Training, Labour Resource Department, Government of Bihar, Patna.
4. The Deputy Director (Employment), Kosi Division, Saharsa.
5. The District Employment Officer, Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Akashdeep, Adv. Mr. Shyameshwar Kumar Singh, Adv.
For the Respondent/s	:	Mr. Ajay Kumar Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 19-02-2018

Heard learned counsel for the petitioner and counsel for the State.

In the present case, the petitioner is challenging the order dated 31.3.2011 (Annexure-4) by which the petitioner has been inflicted punishment of withholding of two increments without any cumulative effect and censure and also in exercise of power under section 97(3) of the Bihar Service Code, punishment has been inflicted that the petitioner will not be granted any payment except what has been paid to the petitioner by way of subsistence allowance and also challenged the order contained in Memo No.



418 dated 2.5.2012 issued under the signature of Joint Director, Employment and Training, Labour Resource Department, Government of Bihar, Patna rejecting the appeal filed by the petitioner before the Secretary-cum-Appellate Authority, Labour Resources Department, Government of Bihar, Patna.

The petitioner was employed in the office of Katihar, the petitioner, on account of illness of his wife, remained on leave continuously from 14.10.2008 to 11.1.2009. When the petitioner remained absent for such a long period, he was put under suspension vide Memo No. 653 dated 14.7.2009 (Annexure-1) whereafter the Deputy Director, namely, Abu Sohail was asked to give report about the absence of the petitioner and, in turn, he has submitted a report about his absence from duty which led to issuance of Memo of Charge vide letter no. 549 dated 18.5.2010. The petitioner has participated in the enquiry, whereafter, punishment has been awarded for stoppage of two increments with non-cumulative effect, the censure and in exercise of power under Section 97(3), it has been decided that whatever payment has been made as subsistence allowance, no further payment will be paid to the petitioner.

Learned counsel for the petitioner submits that the appeal was filed but, the same was rejected. He further submits that the



enquiry was not conducted in a proper manner as Abu Sohail, who had submitted report was appointed Enquiry Officer and, as such, he is a witness to the proceeding as to how he was appointed as enquiry officer.

On perusal of the order of punishment, it appears that the affect of the two punishments has lost its force but, only the surviving punishment is the deprivation of arrear of salary for the period he remained under suspension.

The inflicted punishment is a minor, there is no denial of the petitioner that he remained absent during that period but, has given an explanation, on account of illness of his wife, he was on leave and, that too, without proper leave and, as such, this Court is not interfering with the order of punishment but, while exercising the power under Section 97(3) of the Bihar Service Code the authority was required to give notice before passing such order as has been held by this Court in the case of *Dinesh Prasad Vs. State of Bihar & Ors.* reported in *2006(4) PLJR 514* wherein it has been held that before inflicting punishment under Section 97(3), the authority is required to serve proper notice and after receipt of the explanation, the authority may pass such order. Admittedly, in the present case, this exercise has not been embarked upon by the respondent without following proper procedure and,



hence, Part-2 of the order is set aside and the matter is remitted back to the authority, if so advised, he may take necessary legal course as is available in law.

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

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.02.2018
Transmission Date	NA

