

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18539 of 2008

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Sudarshan Prasad Singh, son of Late Nageshwar Singh, resident of Village-Sardiha, P.O.-Sardiha, P.S.-Simri Bakhtyarpur, District-Saharsa, at present posted as Head Clerk Jai Nagar, Block, District-Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Department of Rural Development, Bihar, Patna.
3. The Commissioner, Darbhanga Division, Darbhanga
4. The Collector, Madhubani
5. The Establishment Deputy Collector, Madhubani
6. The Block Development Officer, Jai Nagar, Block, District-Madhubani

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashank Shekhar Jha, Adv
For the Respondent/s : Ms. Archana Meenakshee, G.P-6
Mr. Karandeep Kumar AC to G.P.-6

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 07-12-2018 The petitioner is aggrieved by the order passed by the Collector, Madhubani dated 12th of July, 1996 which was communicated to the petitioner vide Letter No. 673 dated 2nd of September, 1997 intimating him that during the suspension period, he shall not be entitled to any emoluments except the subsistence allowance which was paid to him; as also the order dated 20th of August, 2007



passed by the Commissioner, Darbhanga Division for affirming and upholding the aforesaid decision.

2. It appears that the petitioner was posted as Nazir in Raj Nagar Block during the period 1981 to 1986. During the aforesaid period, he was placed under suspension on the basis of an audit report which disclosed that the disclosure of expenditure of Rs. 30,000/- was incorrect; rather it was only Rs. 16,500/-. Thus, such disclosure by the petitioner amounted to defalcation of an amount of Rs. 13,500/-. The petitioner was suspended and a departmental proceeding was initiated against him.

3. The enquiry report was not accepted by the Disciplinary Authority and again an order was passed for conducting enquiry afresh. Thereafter, the departmental proceeding was closed.

4. During the pendency of the departmental proceeding, on the basis of a complaint against the petitioner of having defalcated an amount of Rs. 13,500/-, a criminal case also was lodged vide Raj Nagar P.S. Case No. 44 of 1986 under Sections 409, 467, 468 and 420 of the Indian



Penal Code. In the aforesaid criminal case, the petitioner was acquitted for paucity of any evidence.

5. The learned counsel for the petitioner has further intimated this Court that under protest and reserving his future rights, the petitioner has deposited Rs. 13,500/- in the Treasury. Despite this, the Collector, Madhubani vide order dated 2nd of September, 1997, which order was passed almost after six years of the closure of the departmental proceeding, directed that nothing except the subsistence allowance would be payable to the petitioner.

6. The learned counsel for the petitioner has assailed the aforesaid order of the Collector as also the order passed in an appeal in which the Commissioner has assumed certain aspects about the case of the petitioner without such assumption being borne out by the records of the case. He has further submitted that in the event of the exoneration of the petitioner in the departmental proceeding as also in the criminal case, it was incumbent upon the respondent authorities to have paid the full emoluments of the petitioner during the period of his suspension unless it was decided



otherwise. No such decision was taken.

7. The other ground of challenge is that if at all the respondent authorities had taken a decision to debar the petitioner from being paid any other emoluments except the subsistence allowance, he was entitled to be noticed for such decision to show his cause. The aforesaid proposition is no longer *res-integra* and several judgments of the Supreme Court as well as this Court indicate that in case of exoneration of an employee in a departmental proceeding as well as in criminal case, reasons are required to be given and only after notice to the concerned employee can the emoluments be withheld from him.

8. In terms of 97(3) of the Bihar Service Code, the petitioner is entitled to be paid the other emoluments to which he was entitled for the period of suspension.

9. The orders impugned do not indicate any cogent reason or reflect that any meaningful consideration has been given to the cause of the petitioner.

10. Both the orders therefore are unsustainable in the eyes of law and are set aside.



11. The petitioner is directed to make a representation before the Collector, Madhubani along with a copy of this order within a period of four weeks from today. On receipt of such representation, the Collector, Madhubani shall, after taking into account the relevant facts, pass a reasoned order within a period of six weeks thereafter in accordance with law. If it is found that petitioner is entitled to all the benefits/emoluments of his service for the suspension period, the same shall be immediately ordered to be paid to the petitioner.

12. With the aforesaid observations and directions, the writ petition is allowed.

(Ashutosh Kumar, J)

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