

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14784 of 2013

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Md. Shakir Jamal, S/O Late Dr. Abdul Wadood, resident of Mohalla-
Mahalpar, P.S- Biharsharif, District- Nalanda, at Present as Director, Minority
Welfare, Directorate, Old Secretariat, Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, General Administration Department, Old Secretariat, Patna.
3. The Commissioner, Munger, Division, Munger.
4. The Additional Secretary, General Administration Department, Old Secretariat, Patna.
5. The Joint Secretary, General Administration Department, Old Secretariat, Patna.
6. The District Magistrate, Sheikhpura.
7. The Officer on Special Duty, General Administration Department, Old Secretariat, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Advocate Md. Fazal Rahman, Advocate Mr. Anisur Rahman, Advocate Mr. Alexander Ashok, Advocate
For the Respondent/s	:	Mr. Kamlesh Kishore, A.C. to SC-12

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 20-06-2019

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

2. By way of this petition, the petitioner has prayed for
the following reliefs:-

*“(i) For issuance of an appropriate writ in the nature
of certiorari to quash the resolution bearing
Memo No.15736 dated 16.11.2012 issued under*



the signature of the Joint Secretary, General Administration Department, Govt. of Bihar; by which the petitioner was given punishment of censure and for the period of suspension nothing to be payable except subsistence allowance.

(ii) For issuance of an appropriate writ in the nature of certiorari to quash letter no.2727 dated 24.10.11 issued under the signature of the Commissioner, Munger Division, Munger, whereby enquiry report of departmental proceeding against the petitioner was submitted which was not served upon the petitioner.

(iii) For any other consequential relief or reliefs for which the petitioner is found to be entitled.”

3. In the present case, the area of dispute is in narrow compass on the fact of raising of technical ground by the petitioner that a full fledged inquiry was conducted for the misdemeanour of remaining absent from duty, the inquiry report was submitted, but without serving the show-cause or inquiry report to the petitioner, the punishment order has been passed vide memo no.15736 dated 16.11.2012.

4. While the petitioner was posted in the office of the Deputy Development Commissioner, Sheikhpura, he had gone for casual leave without awaiting for its approval, which was later on, rejected and thereby he absented himself from the place



of his working, was the reason for initiation of proceeding after putting him under suspension. The Inquiry Officer submitted the report, but the same has not been served upon the petitioner. It was the duty of the competent authority to ask an explanation from the petitioner and whereafter he could have passed the order in accordance with law, but the same has not been done in the present case and instead of that, the petitioner has been visited with the punishment of censure for the year 2010-11 and made him dis-entitled to the full salary for the period of suspension save and except the subsistence allowance.

5. Learned counsel for the petitioner submits that the order is not sustainable on two counts; first the procedure with regard to supply of inquiry report and asking the explanation has not been followed and another, the second punishment could not have been passed without affording opportunity of show-cause. Though refusal to make payment of salary may not be a punishment, but it is penal in nature and requires that the petitioner should have been given an opportunity to show-cause and after considering his explanation the authority could have passed the order.

6. Learned counsel for the State has not denied the fact that the inquiry report was not served upon the petitioner



inasmuch as, a fresh proceeding for depriving him for the salary for the suspension period was not initiated, but straightway the punishment has been awarded. This Court is agreed with the submission that it was the duty of the competent authority to have followed the procedure, but the same has not been done in the present case.

7. In such view of the matter, the resolution bearing memo no.15736 dated 16.11.2012 as well as the order dated 20.06.2013 are quashed. The matter is remanded back for fresh consideration by the competent authority after following the due procedure. Any benefit will be subject to result of the proceeding.

8. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	22.06.2019
Transmission Date	

