

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15261 of 2011

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Pandey Venkatesh Prasad Sinha S/O Late Bhairaw Prasad R/O Village
Matukpur, Police Station- Barhara, District- Bhojpur

... .. Petitioner

Versus

1. The Principal Secretary, Social Welfare Department, Govt. of Bihar, Patna.
2. The Joint Secretary, Social Welfare Department, Govt. Of Bihar, Patna
3. The Deputy Secretary, Social Welfare Department, Govt. Of Bihar, Patna
4. The Director, Social Welfare Directorate, Govt. Of Bihar, Patna
5. The Deputy Director , Social Welfare Directorate, Govt. Of Bihar, Patna

... .. Respondents

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Appearance :

For the Petitioner : Mr. Banwari Sharma, Advocate
For the Respondents : Mr. Mrigendra Shamra AC to GP-20

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 18-11-2019

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

On seven (07) charges the petitioner was
proceeded against departmentally. Item 6 was
stated to be proved. It was on that basis the
punishment of stopping five (05) increments with
cumulative effect; and that nothing beyond the
subsistence allowance was payable for the period of
suspension was passed on 30.11.2007

The petitioner approached this court in
C.W.J.C.No. 15206 of 2009. The matter was
considered before this Court and remanded to the



Enquiry Officer to complete the Enquiry, in accordance with law and the order of punishment dated 30.11.2007 was quashed. This Court had taking note of the fact that certain reports have been referred by the Authorities to sustain the charges, but, there was nothing on record to show that evidence in support of the reports by way of witnesses had been brought in the Enquiry to prove the reports and that the same was done after affording the petitioner an opportunity to cross-examine the witnesses.

Upon remand the petitioner has again been visited with an order of punishment. Three annual increments of the petitioner have been withheld with cumulative effect. The consequence of deprivation on account of dues other than the subsistence allowance for the period of suspension has also again been awarded.

The petitioner's counsel submits that upon remand by this Court the Enquiry Officer could not sustain the charges and had submitted a report that charges including Item No.6 could not be proved.



The Disciplinary Authority without there being any material on record and without giving a notice of disagreement with the findings of the Enquiry Officer as contemplated under Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity “ Bihar CCA Rules, 2005”) has proceeded to award the punishment in-question. On the last occasion, the State counsel was allowed an opportunity to produce the records of Enquiry so as to ascertain the veracity of the said submission with reference to the records of Enquiry. Records have been produced today.

Upon going through the records, the State counsel has fairly pointed out that after submission of the Enquiry Report dated 15.7.2010, there is nothing on record to show that petitioner was given an opportunity by communicating the points of disagreement with tentative findings of the Disciplinary Authority based on any material on record in the Enquiry.It is only after compliance with such a procedure as contemplated under Rule 18(2) of the Bihar CCA Rules, 2005 that the petitioner



could have been visited with the penal consequence in spite of report of the Enquiry holding charges not to be proved. The said procedure manifests compliance with principles of natural justice. Once the procedure has not been followed, this Court is left with no option but to set aside the order of punishment dated 30.11.2007.

Accordingly, the notification dated 07.07.2011 issued by the Deputy Secretary, Social Welfare Department, Government of Bihar, as contained in Annexure-18 to the writ petition, awarding the punishment to the petitioner is hereby quashed.

The petitioner, in the meantime, has come to retire in the year 2013 itself, as submitted by the counsel for the petitioner. In the circumstances, this Court would observe that the petitioner would be entitled to all consequential benefits in accordance with law.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
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