

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5267 of 2015

Dr. Binod Singh son of Late Jagdish Singh, Resident of Mohalla- Ashok Nagar, Road No.-11, Flat No.-304, Raj Ram Mohan Roy Apartment, P.S.- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Joint Secretary, Health Department, Government of Bihar, Patna.
3. The Director, Indigenous Medicine, Government of Bihar, Patna.
4. The Registrar, Bihar Homeopathic Board, Kadamkuan, Patna.
5. The President, Bihar Homeopathic Board, Kadamkuan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Radha Mohan Singh
For the Respondent/s	:	Mr.Ram Balak Mahto

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03-05-2019

Heard senior counsel for the petitioner as well as counsel for the respondent-State.

Writ petition has been filed seeking quashing of Resolution dated 19.02.2015 by which Joint Secretary to the Government of Bihar in the Health Department has initiated proceeding against the petitioner under Rule 17 of Bihar Government Servant Classification, Control & Appeal) Regulation, 2005.

Submission of senior counsel for the petitioner is that charge memo contains charges which are substantially same which had earlier been communicated to the petitioner by charge memo dated 05.12.2011. He submits that from bare perusal of charge



memo dated 05.12.2011, it is apparent that petitioner had been proceeded against for reinstating one clerk, namely, Jamuna Ram upon his release on bail pursuant to his implication in criminal case. The current charge memo dated 19.02.2015 which is subject matter of the instant proceeding also levels same allegation.

Counsel for the State, on the other hand, submits that reinstatement contrary to rule/ extent departmental decisions, was subject matter of the earlier proceeding.

In the instant case, issue which is being enquired was the misconduct and irregularity committed by said Jamuna Ram upon his reinstatement by the petitioner. He submits that said clerk Jamuna Ram had indulged in illegal activity subsequently. Therefore, fresh cause of action has necessitated issuance of the second charge memo which is impugned in the instant petition.

This court has gone through the two charge memos.

Charge memo dated 05.12.2011 contains amongst other charges, charge in relation to reinstatement of the said clerk Jamuna Ram which reads as follows:-

"श्री जमुना राम , लिपिक के विरुद्ध अभियोदन की स्वीकृति दे दिये जाने के बावजूद पुनः जमानत पर छूटने पर श्री राम को उसी पद पर पदास्थापित करना।"

Total four charges have been framed including the charge that petitioner allowed clerk Jamuna Ram to work on the



same post after his release on bail in spite of grant of sanction against him for prosecution.

Petitioner was punished. He preferred appeal against the order of punishment dated 05.02.2014 which is still pending.

In the charge memo, which is the subject matter of the instant proceeding, charge nos. 1 to 4 are in respect of same rejoining/ reinstatement of the said clerk Jamuna Ram upon his release on bail in earlier criminal proceeding.

Petitioner has placed on record the office order issued by him in the capacity as In-charge Registrar, Bihar Homeopathic Board. The order of reinstatement of said Jamuna Ram is dated 28.06.2011. It is the specific case which cannot be disputed on the basis of record that there is no other decision reinstating said Jamuna Ram after 28.06.2011. The said conduct/misconduct in allowing said Jamuna Ram to rejoin on 28.06.2011 had already been enquired into on the basis of charge memo dated 05.12.2011. Charge to that extent contained in paragraphs 1,2, 3 and 4 of charge memo dated 19.02.2015, in the circumstance which are only referring to consequences of reinstatement cannot be made basis of fresh proceeding against the petitioner by issuing another charge memo. Such allegation as contained in charge nos. 1,2,3 and 4 amounts to de novo enquiry on the same set of charge which



had already been enquired and on basis of which petitioner had already been punished pursuant to charge memo dated 05.12.2011. Under the Bihar CCA Rules, 2005 there is no provision which provides for conducting successive enquiries on the same set of charges again and again, even after delinquent has been awarded punishment on basis of same charge in the earlier proceedings. Respondents therefore are precluded from proceeding against the petitioner on charges no. 1-4 in the later charge memo dated 19.02.2015 which are substantially the same as charge memo dated 05.12.2011 which alleged that petitioner had allowed the rejoining of said clerk (Jamuna Ram) upon his release on bail, though he continued to be an accused and in spite of sanction of prosecution against him. Enquiry may proceed in respect of other charges contained in charge memo dated 19.02.2015 in accordance with law.

It is needless to say that same should proceed in accordance with the procedure prescribed under Bihar CCA Rules, 2005, by affording opportunity to the petitioner in accordance with law expeditiously.

Writ petition is allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA



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