

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6601 of 2019

=====

Ajay Krishna Mishra Son of Late Jagannath Mishra, Resident of Mohalla-
Rajeev Nagar, Shekhar Sadan, Road No 25, P.S-Digha, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Prohibition, Excise and Registration Department,
Government of Bihar, Patna.
3. The Special Secretary, Prohibition, Excise and Registration Department,
Government of Bihar, Patna.
4. The Under Secretary to the Government, Prohibition, Excise and
Registration Department, Government of Bihar, Patna.
5. The Inspector General of Registration, Prohibition, Excise and Registration
Department, Government of Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Jha 3, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, AG
		Mr. Anshuman Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

3 22-09-2020 Heard Mr. Satish Kumar Jha, learned counsel for the

petitioner and Mr. Anshuman Singh, learned counsel for the

State through virtual court proceeding.

In the present case, the petitioner is challenging
the Notification bearing Memo no.38 dated 04.01.2019
(Annexure-1) issued under the signature of Joint Secretary,
Prohibition, Excise and Registration Department, Government
of Bihar, Patna whereby and whereunder the service of the
petitioner has been dismissed and by another order, vide Memo
no.746 dated 27.02.2019 (Annexure-2), the application of



review filed by the petitioner has been rejected.

In the present case, a departmental proceeding was initiated after the lodging of First Information Report wherein allegation has been made that the documents show accumulation property beyond the known source of income. After departmental proceeding, the copy of enquiry report was served upon the petitioner which was replied by him and has taken a plea that the procedure, which was required for holding the departmental proceeding, has not been followed, inasmuch as he has submitted that the departmental proceeding has not been conducted in terms of Rule 17 of the C.C.A. Rules and also placed reliance on the order passed in C.W.J.C. No.15611 of 2016, submits that the proceeding is nullity and the consequence the order of dismissal is bad in law as also order of review be quashed.

On the other hand, learned counsel for the State has vehemently opposed the prayer of the petitioner having stated that meticulously the procedure of departmental proceeding has been followed and whereafter the petitioner was given show cause for raising his grievance and after due consideration, the order of dismissal has been passed.

Having considered the rival contentions of the party,



instead of going to the merit and the procedural part for holding departmental proceeding, this Court has confined its consideration with regard to the nature of order of dismissal as well as the order of review. From the order of dismissal dated 04.01.2019 does not appear that the defence taken by the petitioner has been taken into consideration, but in a mechanical manner the order of dismissal has been passed. The same thing has been done in the order of review. It is well known principle of law that the defence taken in show cause should have been considered but nothing has been taken into consideration. It was the obligation on the part of the competent authority to take into consideration the objection of the petitioner that has been taken in the explanation and after due consideration, the competent authority should have passed the order.

In such view of the matter, the order of dismissal, vide Memo no. 38 dated 04.01.2019 (Annexure-1) and the order of review, vide Memo no.746 dated 27.02.2019 (Annexure-2), are quashed and the matter is remanded back to the authority concerned who will look into the grievance of the petitioner including the objection that he has filed and take decision in accordance with law within a period of four weeks from the date



of receipt of a copy of this order.

With the above observation and direction, this petition
is allowed.

(Shivaji Pandey, J)

Mahesh/-

U			
---	--	--	--

