

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1642 of 2019

Sanjay Kumar Upadhayay Sri Baban Upadhayay Resident of Sambika Path,
New Dillian, P.S. Dehri-on- Sone, District Rohtas, presently residing at 1-
B/14, Road No. 1B, Pani Tanki, New Patliputra Colony, P.S.- Patliputra,
District- Patna-800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Social Welfare Department, Government of Bihar, Patna
3. The Director, Integrated Child Development Services (ICDS) Department of Social Welfare-cum- Inquiry Officer, Government of Bihar, Patna.
4. The Joint Director, Department of Social Welfare, Government of Bihar, Patna,

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the Respondent/s : Mr. Md.Raisul Haque (Sc10)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 26-11-2021

Heard the learned counsels for the parties.

2. In the instant petition, petitioner has prayed for following reliefs:

“i. For issuance of an order, direction or a writ of certiorari for quashing and setting aside the notification contained in Memo No. 5821 dated 10.10.2018 whereby and where under the petitioner, then posted as an Assistant Director District Child Protection Unit, Bhojpur at Arrah has been visited with the punishment of dismissal from service with a further stipulation that he would not be entitled to anything apart from the subsistence allowance during the period of suspension.

ii. For issuance of an order, direction or a writ of mandamus for



directing the respondent authorities to reinstate the petitioner with all consequential benefits including the arrears of salary for the period during which he has been kept out of employment by the illegal impugned order as well as full salary for the period of suspension.

iii. For issuance of an order, direction or a writ of certiorari for quashing and setting aside the inquiry report dated 17.11.2017 which has been prepared by the Inquiry Officer in contravention of the C.C.A. Rules, 2005 as well as in view of the fact that the same is based on no evidence at all.

iv. For issuance of an order, direction or an appropriate writ for staying the operation of the aforesaid notification contained in Memo No. 5821 dated 10.10.2018 during the pendency of the present writ application.”

3. The petitioner is stated to have been appointed as Assistant Director, District Child Protection Unit and he was posted at Arrah. On 01.07.2015, the allegation levelled against him is that he had demanded and accepted a sum of Rs. 50,000/- illegal gratification from one Sri Dashrath Prasad. In this regard, Vigilance Case No. 52/2015 dated 01.07.2015 was registered for the offences punishable under Sections 07/2013(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Arising out of the aforesaid factual aspect, the petitioner was subjected to parallel proceedings. In the disciplinary proceedings, charges were framed on 08.12.2015 and it was



concluded in imposition of penalty as dismissal from service on 10.10.2018.

4. On the other hand, criminal proceeding is pending against the petitioner. In support of challenge to the order of dismissal dated 10.10.2018, learned counsel for the petitioner vehemently submitted that from initiation of enquiry itself is not in accordance with Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. He has specifically stated that there is non-compliance of Sub-rule 3 and 4 of Rule 17 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. The aforesaid rules are relating to preparation article of charges, statement of imputation, list of documents and list of witnesses followed by show cause notice seeking petitioner's explanation on the alleged charge. Perusal of Annexure-P-1B, it is evident that there is non-compliance to the aforesaid provisions of Rules, 2005.

5. Learned State Counsel was asked as to whether was there any compliance to the aforesaid provisions for initiation of enquiry or not? On this issue, he stated that there is non-compliance .

6. In the light of these facts and circumstances, initiation of enquiry itself is defective. Therefore, petitioner has



made out a case to interfere the order of dismissal dated 10.10.2018 and it is set aside. Matter is remanded to the disciplinary authority to commence enquiry from the defective stage and conclude the disciplinary proceedings within a period of six months from the date of receipt of copy of this order.

7. With the above observations, the instant petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.11.2021
Transmission Date	

