

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.79 of 2021

Dr. Nirmal Kumar Singh S/o Rameshwar Prasad posted as Medical Officer,
Community Health Centre, Sonbarsa, P.O. and P.S.- Sonbarsa, District-
Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, New Secretariat, Vikash Bhawan, Patna.
3. The Joint Secretary, Health Department, Government of Bihar, New Secretariat, Vikash Bhawan, Patna.
4. The Under Secretary, Health Department, Government of Bihar, New Secretariat, Vikash Bhawan, Patna.
5. Civil Surgeon-cum-Chief Medical Officer, Aurangabad.
6. Civil Surgeon-cum-Chief Medical Officer, Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Surendra Mishra
For the Respondent/s	:	Mr.Lalit Kishore, AG
	:	Mr. Birju Prasad, GP

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

Date : 27-10-2021

In the instant petition, State counsel accepts notice for the respondents.

Heard learned counsels for the parties.

The petitioner has prayed for the following reliefs:

(i) For quashing and setting aside the notification of the Health Department, Government of Bihar issued vide memo no. 538 (9), dated 12.05.2016 under the signature of Sri Nagendra Prasad, Under Secretary to the Government



whereby and whereunder the following order of punishment has been passed against the petitioner (i) punishment for censure has been awarded against the petitioner, (ii) stoppage of 3 annual increments with non cumulative effect, (iii) no pay for the period 01.09.2005 to 08.06.2007 will be made to the petitioner and (iv) for the period of suspension 14.06.2009 to 21.06.2010 nothing would be paid except subsistence allowance.

(ii) For direction upon the respondents authorities to grant and pay all the dues salary of the petitioner for the period 01.09.2005 to 08.06.2007 after sanctioning the same as commuted leave and further for direction to pay full salary of the petitioner of suspension period.

(iii) For direction upon the respondents to release all the three annual increments and its consequential benefits to the petitioner.

(iv) For direction upon the respondents to grant any such other relief or reliefs for which the petitioner is found legally entitled in the facts and circumstances of the case.

The petitioner was subjected to a disciplinary proceedings and it was concluded in imposition of penalty by the disciplinary



authority. The petitioner without exhausting statutory remedy of appeal before the appellate authority has rushed to this court in seeking quashing of the disciplinary authority's order. Thus, *prima facie* the present petition is premature. The Apex Court in the case of *State of Jammu and Kashmir vs R.K. Zalpuri and Others AIR 2016 Supreme Court 3006* in paragraph 20 held as under:

Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

Underline emphasized



One of the principle laid down in the aforesaid decision of the Apex Court is that writ court cannot entertain writ petition in the absence of exhausting statutory remedy of appeal. Similar view was expressed in the latest decision of *Assistant Commissioner (CT) LTU, Kakinada and ors. Vs. M/S Glaxo Smith Kline Consumer Health Care Ltd., in Civil Appeal No.2413/2020 (Arising out of SLP (C) No.12892/2019) reported in 2020 SCC Online SC 440*, elaborately discussed and held that party must avail statutory remedy and writ petition.

In view of these facts and circumstances, the petition stands disposed as premature reserving liberty to the petitioner to approach the appellate authority. In the event of filing of memorandum of appeal before the appellate authority, the same shall be considered within a period of six months from the date of receipt of the petitioner’s memorandum of appeal in accordance with law.

With the above observations, writ petition stands disposed of.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

