

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7079 of 2021

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Ashok Kumar Son of Shivnandan Mandal Resident of village and Post
Office- Mahinath Nagar, Police Station- Beldour, District- Khagaria

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Khagaria
3. The District Panchayat Raj Officer, Khagaria
4. The Sub Divisional Officer, Gogri, Khagaria
5. The Block Development Officer, Parbatta, Gogri, Khagaria
6. The Circle Officer, Parbatta, Gogri, Khagaria
7. The Block Development Officer Allouli, Khagaria
8. Mukesh Kumar Son of Bisheshwar Prasad Yadav Resident of village-
Khiradih, Post Office- Dumariya, Bujurg, Police Station- Parbatta, District-
Khagaria

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate
	:	Mr. Mrityunjay Kumar, Advocate
For the Respondent/s	:	Mr. Kameshwar Prasad Gupta (Gp10)

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

Date : 09-03-2022

Heard learned counsel for the parties.

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

“That the present writ application is being
filed on behalf of the petitioner for issuance of
writ/writs, direction/directions order/orders,
commanding upon the respondents for the following
relief/reliefs:-

(i) For that order dated 19.01.2021 passed
in Complaint Case No. - 521210112122003959 dated



12.12.2020 by Sub Divisional Public Complain Redressal Officer, Gogri, Khagaria (Annexure – 4) may be set aside.

(ii) For that Letter No. - 161 dated 09.02.2021 issued by District Panchayat Raj Officer Khagaria in favour of Block Development Officer, Parbatta may be quashed.

(iii) For that order vide Memo No. - 173 dated 09.02.2021 passed by Collector Khagaria as well as its correction order vide Memo No. - 201 dated 12.02.2021 passed by Collector Khagaria (Annexure – 6 and 6/1) may be set aside.

(iv) For that Letter No. - 161 dated 09.02.2021 issued by District Panchayat Raj Officer in favour of B.D.O Parbatta as well as order vide Memo No. - 173 dated 09.02.2021 as well as Correction Order vide Memo No. - 201 dated 12.02.2021 passed by Collector Khagaria may be stayed during pendency of Petition.

(v) For that any other relief/reliefs may also be provided to the petitioner if he deserve the same.”

3. In order to rectify the prayer, petitioner has submitted supplementary affidavit.

4. Crux of the matter is whether this Court can interfere with the order of suspension passed by the District Magistrate, Khagaria or not?

5. In terms of Rule 23 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 petitioner has a



statutory remedy of appeal before the Appellate Authority. In the case of *State of Jammu and Kashmir V/s. R.K. Zalpuri and others* reported in *AIR 2016 SC 3006 paragraph-20*, it is held that before entertaining a petition under Article 226 one of the principle which is required to be examined is whether petitioner has exhausted the statutory remedy of appeal or not. Paragraph 20 of the aforesaid Apex Court decision is as under:

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V/s.Dosu Aardeshir Bhiwandiwalla and others {(2009) 1 SCC 168}, 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 question 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”

6. Undisputedly, in the present case petitioner has not exhausted remedy of appeal against the order of suspension dated 09.02.2021. Hence, the present petition is premature.

Underline Emphasized



7. Accordingly, writ petition stands dismissed, reserving liberty to the petitioner to prefer appeal before the Appellate Authority. The Appellate Authority is hereby directed to take note of the fact that there cannot be any delay in filing memorandum of appeal against the suspension order for the reasons that as long as petitioner is placed under suspension he gets cause of action every day, in other words, it is a continuing cause of action.

8. If memorandum of appeal is filed with reference to Rule 23 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the Appellate Authority is hereby directed to examine the petitioner's memorandum of appeal and decide within a reasonable period of four months from the date of receipt of petitioner's appeal.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	11.03.2022
Transmission Date	

