

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19285 of 2015

Nilima Kumari wife of Sri Raj Kishore Singh, resident of Telha Kalibari, P.S.-
Civil Lines, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Divisional Commissioner, Magadh Division at Gaya.
3. The Director, Integrated Child Development Services Directorate Bihar having his office at Indira B
4. The Deputy Development Commissioner, Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vikas Mohan, Advocate
For the Respondent/s : Mr. SC 4-Md. Raisul Haque

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

Date : 21-04-2022

Heard learned counsel for respective parties.

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

“For issuance of writ in the nature of certiorari for quashing the impugned order issued vide memo No 1843 dated 5.11.14 by which the petitioner has been dismissed from the post of the Lady Supervisor, Daudnagar without proper enquiry without providing the relevant required documents for defending her case and further respondent be directed to reinstate the service of petitioner alongwith full back wages.”

The petitioner while working as Lady Supervisor she was subjected to disciplinary proceedings and concluded in im-



sition of penalty of dismissal from service on 05.11.2014. Feeling aggrieved of the dismissal order she preferred a review petition before the Reviewing Authority and it was decided on 16.12.2014. Thus, the petitioner has presented this petition questioning the aforesaid orders. Perusal of review order dated 16.12.2014 in which it is stated that petitioner has remedy of appeal.

Learned counsel for the petitioner submitted that there is no appeal against the order of dismissal passed by the Commissioner. Therefore, the view of the reviewing authority dated 16.12.2014 is that the petitioner has a statutory remedy of appeal is incorrect.

In the light of the aforesaid submission, it is necessary to peruse Rule 24 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005. Rule 24 reads as under:-

“24. Appellate Authorities. -
(1) A Government Servant, including a person who has ceased to be in government service, may prefer an appeal against the orders specified in Rule 23 to the authority specified in this behalf by a general or special order of the Government or, where no such authority is specified:-

(i) where such Government Servant is or was a member of Civil Service, Group-A or Group-B or holder of Civil Post, Group-A or Group-B,-



(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the Government where such order is made by any other authority;

(ii) where such Government servant is or was a member of a Civil Service, Group-C or Group-D, to the authority to which the authority making the order appealed against is immediately subordinate.

(2) There shall be no appeal against the orders of the Government, however, review petitions may be filed in the form of Memorials.

(3) Where the person, who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate or to an authority specially authorised for this purpose by the Government."

Rule 24 (1)(ii) is relating to appeal by the Group-C and D employees. In the light of the aforesaid provision, the petitioner has a statutory remedy of appeal.

Learned counsel for the petitioner submitted that Commissioner is equivalent to Secretary. Therefore, Commissioner shall be the Government.



Such contention cannot be appreciated for the reasons that Commissioner even though equivalent to that of Secretary with reference to the status of the concerned Commissioner ultimately it is dependent upon the post/designation held by such person. Government means under the definition of Rule 2(a) Government means the Government of Bihar. Therefore, head of the Department like Commissioner of a particular department cannot be equated to that of Government of Bihar.

At this stage, it is necessary to take note of Rules of Business of the State of Bihar relating to allocation of business from the Secretariat level to the head of the department so as to come to the conclusion that Commissioner is not the Government of Bihar.

In the light of these facts and circumstances, the petitioner has not made out a case so as to interfere with the order dated 16.12.2014 passed by the Commissioner in review application. Hence, present petition stands dismissed reserving liberty to the petitioner to prefer an appeal before the appellate authority within a period of eight weeks from the date of receipt of this order. The appellate authority is hereby directed to take note of delay in presenting the memorandum of appeal with reference to Section 14 of the Limitation Act, 1963. If such appeal is filed the appellate



authority shall decide the petitioner’s appeal within a period of six months from the date of receipt of petitioner’s appeal.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

