IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5663 of 2008

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Ajay Ranjan, S/o-Late Nand Kishore Thakur, Resident of Quarter No.-2/2, Gater No. 3 (Campus of Indian Bank) Ganga Project Division-2, Bihar Rajya Jal Parshad, Beur (Near Beur Central Jail) Patna, P.S.-Beur, Distt.-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Secretary, Public Health Engineering Department, Patna.
2. The Bihar Rajya Jal Parshad through Managing Director, West Boring Canal Road, Patna-1.
3. The Managing Director, Bihar Rajya Jal Parshad, West Boring Canal Road, Patna-1.
4. The Secretary, Bihar Rajya Jal Parshad, West Boring Canal Road, Patna-1.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Indrajeet Bhushan, Advocate
	:	Mr. Manish Kumar, Advocate
For the Respondent/s	:	Mr. Sanjeet Kumar Singh, Advocate
		Mr. Indrajeet Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 11-07-2022

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

> *"(i). In the nature of certiorari directing and commanding the respondent to quash the order as contain in office order No. 24 dated 22.01.2008 Passed by Secretary under the order of Managing Director, Bihar Rajya Jal Parshad, West Boring Canal Road, Patna 1, whereby and whereunder the suspension of the Petitioner was revoked with a condition :-*
>
> *(A) That the delinquent should understand the importance of Job in future.*
>
> *(B) That the delinquent shall receive only the subsistence allowance for the Period of suspension.*

(ii). In the nature of "Mandmus" directing and Commanding the respondents to pay the full salary to the petitioner for the period of suspension.

(iii). For any other relief/reliefs for which the Petitioner is entitle."

Petitioner was subjected to disciplinary proceedings on certain six charges. The inquiring officer held that the charges leveled against the petitioner were not proved. On receipt of inquiring officer's report, the disciplinary authority should have accepted or rejected the report, if the disciplinary authority disagreed with the inquiring officer's report. On the other hand, the disciplinary authority proceeded to impose penalty "that the delinquent should understand the importance of job in future" and further he is entitled to subsistence allowance for the suspension period. Feeling aggrieved by the aforesaid penalty order, petitioner has presented this petition.

Learned counsel for the petitioner submitted that the inquiring officer held that all the six charges framed against him were not proved. Therefore, imposition of penalty in the absence of show cause notice is not warranted and it is liable to be set aside. Further, it is submitted that when the charges were not proved in inquiry in such circumstances treating the intervening suspension period only to subsistence allowance is illegal and arbitrary.

Per contra, learned counsel for the respondent submitted that there is no infirmity in the order of penalty having regard to the opinion expressed by the disciplinary authority.

Heard learned counsels for the respective parties.

Undisputed facts are that the petitioner was subjected to disciplinary proceedings on six charges. The inquiring officer held that all the six charges were not proved. On receipt of inquiring officer's report to disciplinary authority if he is disagreeing with the inquiring officer's finding on each of the charge in that event he had a option of remanding the matter to the inquiring officer to commence the inquiry from the defective stage or suo moto issued a show cause notice. What is the error committed by the inquiring officer with reference to material information and seeking petitioner's explanation? None of the aforesaid action has been taken by the disciplinary authority. On the other hand, he proceeded to impose the penalty while treating the suspension period as suspension only in other words restricting suspension period to only subsistence allowance.

This Court asked the respondent counsel as to whether disciplinary authority had issued show cause notice before imposition of penalty or not for which it was submitted that disciplinary authority had not issued a show cause notice.

In the light of these facts and circumstances, the disciplinary authority's order in respect of imposition of penalty that "the delinquent should understand the importance of job in future" is not one of the penalty identified under the penalty rules. Therefore, the disciplinary authority stating in his order that the delinquent should understand the importance of job in future is not one of the penalty. Consequently, it doesn't amount to imposition of any penalty with reference to the disciplinary proceedings. Insofar as, restricting subsistence allowance for the suspension period from 21.08.2006 to 22.01.2008 is concerned, when the charges were not proved it is not appropriate for the disciplinary authority to treat the suspension period as a suspension only while restricting subsistence allowance instead of full salary payment for the suspension period from 21.08.2006 to 22.01.2008.

In the light of these facts and circumstances, the impugned order dated 22.01.2008 (Annexure-18) stands set aside.

The suspension period dated 21.08.2006 to 22.01.2008 is treated as duty for all purposes. The respondent-disciplinary authority/appointing authority is hereby directed to regulate the suspension period as a duty and extend difference of salary for the aforesaid period and disburse the same within a period of two months from the date of receipt of this order. The petitioner is entitled to 6% interest on all arrears of salary. If the petitioner is not paid arrears of salary and interest for the suspension period within the stipulated period in that event the petitioner is entitled to litigation cost and it is quantified at Rs. 10,000/- (Ten Thousand).

Accordingly, CWJC No. 5663 of 2008 is allowed.

(P. B. Bajanthri, J)

shanu/-

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