IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18983 of 2011

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Bishwanath Prasad, son of Sri Ramchandra Ram, Resident of C/o Shiv Dhyan Singh, Sundri Sadan (Ist Floor), Jagat Narain Road, Patna, P.S. Kadamkuan, Distt-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
3. The Inspector General of Prison, Government of Bihar, Patna.
4. The Jail Superintendent, Samastipur Mandal Kara Samastipur.
5. The Accountant General, Bihar, Patna.
6. The Treasury Officer, Govt. of Bihar, Patna.
7. The Deputy Secretary, Home Deptt., Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate
For the State	:	Mr. Madhaw Prasad Yadav, GP-23
		Mr. Rajesh Kumar Sinha, AC to GP-23
For the AG	:	Mr. Arun Kumar Arun, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 02-08-2022

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

> *"For issuance of writ in the nature of certiorari for setting aside the order dated 20.08.2008 bearing Memo No. H/Prision/R.P./07-Patna, passed by Deputy Secretary of Govt. of Bihar of Home Department, contained in Annexure-5 whereby and whereunder without serving the 1st enquiry report to the petitioner, without asking IInd show cause from the petitioner, without doing any second inquiry and without serving the copy of second inquiry report, without serving the relevant demanded document by the petitioner, violating the norms of*

natural justice as provided under Article 311 of the Constitution of India and natural justice, the following disproportionate punishment have been given in very very unconstitutional and dictatorious manner.

(i) Petitioner has been put on the minimum scale of salary.

(ii) No increment will be given to the petitioner at all in future.

(iii) Except subsistence allowance, nothing shall be paid for the period of suspension.

(iv) This order will be applicable with immediate effect of 20 August, 200, when order was passed.

And further for issuance of a writ in the nature of mandamus strictly directing the respondents to make payment of entire arrears amounts with appropriate interest of at least 12% per annum, as if the said impugned order never came in force, with the petitioner and further for issuance of any other appropriate writ or writs, direction or directions as it may be deemed fit and proper to the facts and circumstances of this case."

02. The petitioner while working as Jail Superintendent he was subjected to disciplinary proceedings in framing of article of charges on 11.05.2007. Petitioner had submitted his explanation on 04.06.2007. It was not satisfied by the disciplinary authority, thereafter, he has proceeded to hold an inquiry. Inquiry was held in which the charges levelled against the petitioner was stated to be proved. On receipt of inquiry officer's report dated 01.08.2007 by the disciplinary authority he had issued a second show cause

notice along with the Inquiry Officer's report. On 02.05.2008, further the disciplinary authority proceeded to impose the penalty of lower stage of pay-scale while invoking sub-rule (vii) of Rule 14 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (for short 'Rules 2005). The petitioner has no appeal remedy for the reasons that impugned penalty order has been passed by the State Government.

03. Learned counsel for the petitioner in support of challenge to the order of penalty submitted that disciplinary authority has not applied his mind while imposing the penalty of lower stage of pay-scale. In terms of sub-rule (vii) of Rule 14 of Rules, 2005 disciplinary authority is required to specify the period in respect of imposition of penalty of lower stage pay-scale. In the present case, disciplinary authority has not specified the period for which the penalty would be in vogue and it is contrary to aforesaid regulation. It is further submitted that suspension period has been treated as suspension only and it is without issuing notice and there is non-compliance of Rule 97 of Bihar Service code. It is also submitted that petitioner was placed under suspension during the intervening period from January, 2007 to July, 2008 for which he has been paid subsistence allowance and subsistence allowance has been paid only after penalty order was imposed. It is also

submitted that the petitioner pension has been withheld to the extent of 50% and it is not permissible under law such withholding of pension is a subject matter of another litigation.

04. *Per contra*, learned counsel for the respondent-State resisted the aforesaid contentions and submitted that there is no infirmity in the inquiry and imposition of penalty is in accordance with the Rules, 2005. Having regard to the proved charge the disciplinary authority had exercised discretionary power while regulating suspension period. It is further submitted that subsistence allowance would not be timely paid and it was paid after completion of inquiry.

05. Heard learned counsels for the respective parties.

06. Undisputed facts are that petitioner was subjected to disciplinary proceeding while he was holding the post of Jail Superintendent on 30.09.2008. Prior to that he was placed under suspension during the period from 29.12.2006 till imposition of penalty on 20.08.2008. The charge-sheet was issued on 19.10.2006 and it was concluded in imposition of penalty on 20.08.2008 while invoking sub-rule (vii) of Rule 14 of Rules, 2005 to the lower stage of pay-scale.

07. Feeling aggrieved and dissatisfied with the order of penalty treating the suspension period as suspension only read

with timely not paid of subsistence allowance the present petition is presented.

08. Petitioner counsel restricted his argument on three counts. (i) There is a total non-application of mind in imposition of penalty and there is a deviation to sub-rule (vii) of Rule 14 of Rules, 2005. (ii) Suspension has been treated as suspension only without compliance of Rule 97 and petitioner is entitled to notice. (iii) Subsistence allowance has been paid only after imposition of penalty after 20.08.2008.

09. The disciplinary authority has not adhered to sub-rule (vii) of Rule 14 of Rules, 2005. It is necessary to reproduce aforesaid provision which reads as under:-

> *"14(vii) Save as provided for in clause (iv), reduction to a lower stage in timescale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;"*

10. Perusal of the aforesaid provision, it is crystal clear that the disciplinary authority is empowered to impose penalty of lower stage of pay-scale while invoking sub-rule (vii) of Rule 14 of Rules, 2005 while specifying particular period. In other words,

the disciplinary authority is required to determine that the penalty is for a particular period like one year, two years etc. To that effect, there is a total non-application of mind on behalf of the disciplinary authority.

11. Perusal of Rule 97 of Bihar Service Code, it is crystal clear that suspension period has been treated as suspension only in the light of proved charge read with imposition of penalty. The petitioner is not entitled to notice as contended by the learned counsel for the petitioner. Payment of subsistence allowance now it has been paid only after retirement. The petitioner was placed under suspension for about nine months and it has been paid after conclusion of the disciplinary proceedings. No doubt, the very object of payment of subsistence allowance is to a suspended employee is defeated for the reasons that providing subsistence allowance is to maintain his family. To that effect, there is an error committed by the disciplinary authority in not paying subsistence allowance from time to time in terms of the relevant provision of law.

12. In the light of these facts and circumstances, the petitioner has made out *prima facie* case so as to interfere with the penalty order dated 20.08.2008 only to the extent that there is a deviation/violation of sub-rule (vii) of Rule 14 of Rules, 2005 to

the extent in not specifying the penalty period. Assuming that specific period has not been mentioned otherwise the petitioner would have attained superannuation and retired from service on 30.09.2008 the disciplinary authority at least applied his mind that he is deemed to have retirement on 30.09.2008 in which month the disciplinary authority imposed the penalty.

13. In the light of these facts and circumstances, the petitioner has made out *prima facie* case. Accordingly, the order dated 20.08.2008 (Annexure-5) stands set aside. The petitioner shall be paid all monetary benefits within a period of three months from the date of receipt of this order. In the result, the present petition stands allowed.

(P. B. Bajanthri, J)

Vikash/-

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