

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.665 of 2021

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Birendra Kumar Mahto, aged about 55 years/ Male, Son of Babuji Mahto
Resident of Village and P.O. - Khirhar Bazar, P.S. - Khirhar, District-
Madhubandi, at present posted as the Labour Superintendent, Kishanganj.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Assistant Chief Secretary, Labour Resources Department, Government
of Bihar, Patna.
4. The Labour Commissioner, Labour Resources Department Government of
Bihar, Patna.
5. The Joint Secretary, Labour Resources Department, Government of Bihar,
Patna.
6. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
7. The Deputy Secretary, Labour Resources Department, Government of Bihar,
Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Ramakant Sharma, Sr. Adv with Mr. Rajesh Kumar, Adv.
For the State	:	Mr. Rakesh Prabhat, AC to SC-21

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 22-09-2022

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner has approached this Court assailing the
order of punishment dated 11.10.2019, as contained in Annexure-1



to the writ petition, whereby the petitioner has been awarded the punishment of reduction to a lower stage in time scale. The Authorities have also passed an order under Rule-97 of the Bihar Service Code, with respect to the period during which the petitioner was under suspension. The order under Rule-9 is dated 23.03.2021, whereby the petitioner has been held entitled to nothing, but subsistence allowance for the period from 15.10.2013 to 14.10.2019.

3. Submission of the learned counsel for the petitioner is two fold. Firstly, the order is unsustainable, as there is no material to show that any misconduct was committed by the petitioner, and secondly, that the punishment is excessive and disproportionate to the finding since the only finding against the petitioner is having allowed an illegal registration of establishment under the Bihar Shops and Establishment Act, 1953.

4. The learned counsel for the State, on the other hand, submits that the issue regarding the finding of charges being proved now stands concluded in view of decision dated 30-10-2018, passed by this Court in C.W.J.C No. 11951 of 2017, as contained in Annexure-29 to the writ petition. This Court, after considering the finding to be correct, has limited its interference with the punishment of dismissal in the following terms:



“Another aspect of the matter is the quantum of punishment. From the records, it appears that the proposal was initiated by Labour Department for inflicting the punishment of stoppage of three increments and the same was approved by the Hon'ble Minister of Labour Services and Employment. As the petitioner is a Class-2 Officer; as per rule of executive business, approval of the Hon'ble Chief Minister, was necessary, for that, the file was sent to the office of the Chief Secretary who suggested penalty of dismissal on the ground of pendency of the criminal case as well as misconduct is of criminal nature which has been approved by the Hon'ble Chief Minister.

The question in the present case is that the punishment is so illogical as well as disproportionate in such a manner that no reasonable person or normal person would expect to inflict the punishment of dismissal as in the present case, the allegation to the charge is that he has illegally registered the shop and which was, later on, found that the shop was run by Santosh Kumar Jha who was involved in the flood scam. The registration has been made in April, 2004, no material has been brought to show that on the date of registration, establishment was engaged in the fraudulent activity, merely, it is a case of registration of the establishment and the allegation has been made that as the application was not received on 13.4.2004 but, in fact, was received on 24.4.2004 which was registered on 26.4.2004 and the charge has been proved. So, this Court is of the view that the misconduct is not connected or correlate with the activity of the petitioner showing any way assisting or abating in the commission of flood scam and, no material has been brought to show that the action of the petitioner has any correlation or relationship with respect to in any manner involved in assisting the Proprietor of the said establishment in the commission of fraud and scam. It can at best be said that illegality or irregularity has been committed by the petitioner in the matter of registration of the establishment and, for that, the dismissal punishment is so excessive, appears to be illogical and hit the conscience of the Court. For this reason, the person cannot be dismissed from service as the dismissal is the highest punishment in the service life of a government employee, would deprive him the employment as well as his future reemployment including his pensionary benefit.



The authority while exercising the power of judicial review in passing the order of punishment, it was required to see that hammers has not been used for cracking the nut. The power should be exercised in such a manner that it should appear that the authority has really applied its balancing approach in awarding the punishment and it should not be defiance of logic.

In that view of the matter, the order of punishment contained in Memo No. 1035 dated 27.04.2017 is set aside and the matter is remanded back to the authority to re-consider in the matter of punishment and take a fresh decision in accordance with law.

In the result, this writ application stands allowed to the extent indicated above.”

5. Upon consideration by the Authorities, punishment has substantially been scaled down now to reduction to a lower stage in the time-scale of pay and dis-entitling the petitioner to any benefits other than the subsistence allowance, which does not require any interference.

6. Considering the rival submissions and the settled legal position regarding limited scope of interference with the quantum of punishment by substituting the punishment under Article 226 of the Constitution of India, this Court is not inclined to interfere with the order of punishment dated 11.10.2019, as contained in Annexure-1 to the writ petition. The submission regarding their being insufficient material to arrive at a conclusion of misconduct against the petitioner



is not open to the petitioner to canvass today in these proceedings, since that issue has already been settled by a decision of this Court on the petitioner’s earlier writ petition bearing C.W.J.C No. 11951 of 2017, as contained in Annexure-29 to the writ petition. There is also no procedural infirmity alleged in respect of the order passed under Rule-97 of the Bihar Service Code dated 23.03.2021.

7. This Court does not find any merit in the writ petition, the same is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06-10-2022
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