IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10314 of 2011

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Akhileshwar Mishra son of Sureshwar Mishra r/o Mohalla-East Patel Nagar, P.S. Shastrinagar, Distt. Patna

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary W.R.D.Sinchai Bhawan, Patna
3. Engineer In-Chief, W.R.D.Bihar, Patna
4. Chief Engineer, Kendriya Rupankan, W.R.D.Anisabad, Patna
5. Deputy Secretary To Govt. ,W.R.D.Bihar, Patna
6. Superintending Engineer, Bandh And Gate Rupankan Circle, Patna
7. Executive Engineer, Nahar Rupankan, Pramandal No. 2 W.R.D.Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tara Nath Jha, Advocate

For the Respondent/s : Mr. Sita Ram Yadav, GP-16

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 01-09-2022

Heard the learned counsels for the parties.

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

> **"1. That, this is an application for issuance of a writ in the nature of certiorari for quashing the part of the departmental letter issued vide its No. 413 dated 29.05.2008 under the signature of respondent no. 5 and also the part of the office order issued vide its Memo No. 753 dated 20.06.2008 under the signature of respondent no. 4 so far it relates to the petitioner under which stating therein interalia that the petitioner was awarded two punishment one to entry the censure for the year 2006-07 and nothing will be paid during the period of suspension except the subsistence allowance and further for quashing of the letter issued vide its No.**

1030 dated 22.12.2008 under the signature of respondent no. 5 under which the Appeal petition of the petitioner was rejected and further for issuance of an appropriate writ/order/direction directing the respondents to make the full payment of the salary to the petitioner, period under which he remained under suspension, after deducting the subsistence allowance amount as paid to the petitioner for the said period and further for issuance of an appropriate writ/direction directing the respondents to make all the payment as claimed aforesaid with interest and also to make payment all the retiral dues after calculating the financial benefits on the basis of the payment of full salary during the period of suspension of the petitioner with all consequential benefits in accordance with law."

3. The petitioner while working as a Head Assistant, he had alleged to have committed certain misdeeds for which he was subjected to disciplinary proceedings in framing article of charges on 09.04.2007. He had denied the alleged charge while submitting his explanation to the charge-memo. The disciplinary authority was not satisfied with the explanation of the petitioner and proceeded to hold enquiry. Enquiry report was submitted to the disciplinary authority. Disciplinary authority without resorting to Rule 18 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (For short Rules, 2005) proceeded to impose the penalty of censure for the year 2006 - 2007 and further suspension period has been treated as suspension only. In other words, petitioner is not entitled to beyond subsistence

allowance. Feeling aggrieved by the order of the disciplinary authority dated 29.05.2008 read with 20th June, 2008, petitioner preferred appeal before the appellate authority and it was rejected on 22.12.2008. However, a communication is stated to have been made to the petitioner on 19.07.2009 (Annexure-10) that the intervening period of suspension would be counted for the purpose of pension.

4. Learned counsel for the petitioner vehemently submitted that there is non-compliance to the provisions of Rule 17 read with Rule 18 of Rules, 2005.

5. One of the contentions is that copy of the inquiring officer's report was not made available along with the second show cause notice before imposition of penalty. Therefore, impugned orders of the disciplinary/ appellate authority are liable to be set aside.

6. Per contra, learned counsel for respondents resisted the aforesaid contentions and submitted that the disciplinary authority need not to furnish copy of the inquiring officer's report before imposing penalty for the reasons that disciplinary authority had imposed minor penalty of censure and treating the intervening period of suspension as suspension only. It is also submitted that intervening period of suspension has been counted for the purpose of extending pension. Therefore, there is

no infirmity in the disciplinary/appellate authority orders which is subject-matter of the present petition.

7. Heard the learned counsels for the respective parties.

8. The petitioner was placed under suspension on 02.04.2007 and it was revoked on 20th June, 2008. Charge-memo was issued on 09.04.2007 and inquiry was concluded in imposition of penalty of censure from the year 2006 - 2007 and further the intervening suspension period has been treated as suspension only instead of duty.

9. Perusal of the records it is evident that disciplinary authority has not adhered to Rule 17 read with Rule 18 of Rules, 2005 while imposing the penalty. The said contention was not disputed by the learned State counsel.

10. On the other hand, learned State counsel contended that only minor penalty of censure was imposed for the year 2006 - 2007 and suspension period has been treated as suspension only. Therefore imposition of minor penalty is in order and it cannot be interfered with, is hereby rejected for the reasons that charge-memo was issued under Rule 17 of the Rules, 2005. Once the charge-memo is issued under Rule 17 for the purpose of major penalty all the procedures laid down under Rule 17 was required to be followed by inquiring officer/ disciplinary authority.

Therefore, resorting to short circuit method by the disciplinary authority in imposition of minor penalty is hereby deprecated. Petitioner has made out a *prima facie* case so as to interfere with the impugned orders of disciplinary and appellate authority dated 29.05.2008 read with 20th June, 2008 and 22.12.2008 (Annexure-7, 8 & 9 respectively). Hence, impugned orders dated 29.05.2008 read with 20th June, 2008 and 22.12.2008 are set aside.

11. The concerned respondent is hereby directed to calculate all monetary benefits including arrears of salary for the suspension period, which is due to the petitioner within a period of three months from the date of receipt of this order and release the calculated amount, failing which petitioner is entitled to interest @ 8% *per annum*.

12. With the above observations, the present petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
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