

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12986 of 2017

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Gauri Shankar Vidyarthi Son of Late Nand Kishor Prasad, Resident of Village-itimha, P.O.-Karma, P.S.-Nasariganj, District-Rohtas Sasaram.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Commissioner, Divisional Commissioner, Patna.
3. The District Magistrate, District-Kaimur Bhabhua.
4. The Sub-Divisional Officer, Mohaniya, District-Kaimur Bhabhua.
5. The Deputy Development Commissioner, District Kaimur Bhabhua.
6. The Senior Deputy Collector Establishment, District Kaimur Bhabhua.
7. The Treasury Officer, District-Kaimur Bhabhua.
8. The Block Development Officer, Adhaora, District-Kaimur Bhabhua.
9. The Block Development Officer Ramgarh Block, District, Kaimur Bhabhua.
10. The Block Development Officer, Nuwan Block, District-Kaimur Bhabhua.
11. The District Certificate Officer, District-Kaimur Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kumar Mishra
For the Respondent/s : Mr. P.K. Verma, AAG-3

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

Date : 10-05-2022

Heard learned counsel for the respective parties.

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

“(a) A writ in the nature of certiorari of any other appropriate writ(s), order or direction to quash/set aside the order dated 27.06.2017 passed by the learned commissioner, Patna (respondent no.2) in Service Appeal No. 218 of 2015 as well as



order vide Memo No. 672 Ested dated 8.5.2015 passed by the learned Collector, Kaimur at Bhabhua, whereunder and whereby the petitioner was dismissed from his service.

(b) A further writ of Mandamus may also be issued direction to the respondent to restore/ the status continue the petitioner service and pay all admitted dues with full salary, D.A. alongwith interest thereon w.e.f. 18.11.2013 to till rejoining the service of the petitioner.

(c) Any other relief or reliefs including the cost of proceeding may be awarded in favour of the petitioner.

(d) Any other appropriate writ(s), order or direction as your Lordship may deem fit and proper.”

The petitioner while holding the post of Najir, he was subjected to disciplinary proceedings in framing six charges on 29.01.2014 and it was served on the petitioner only on 07.02.2014. The petitioner had submitted his reply to the charge memo on 20.10.2014. Thereafter, supplementary charge memo was issued on 15.01.2015. The disciplinary authority was not satisfied with the petitioner's explanation, proceeded to appoint inquiring and presenting officer to hold inquiry against the petitioner on the alleged allegations and alleged charges levelled



against the petitioner. The inquiring officer has submitted his report. Based on the inquiring officer's report, the disciplinary authority proceeded to issue second show-cause notice seeking petitioner's reply on the inquiring officer's report. The petitioner submitted his explanation and it was not satisfied by the disciplinary authority. Thus, disciplinary authority proceeded to pass order of dismissal on 28.04.2015.

Feeling aggrieved and dissatisfied with the order of dismissal, the petitioner preferred appeal before the appellate authority and it was rejected by the appellate authority on 27.06.2017. In the light of these facts and circumstances, the petitioner has questioned the validity of the disciplinary and appellate authority's order dated 28.04.2015 and 27.06.2017 respectively.

When the matter was taken up on 06.12.2021, the following order was passed:

“Heard learned counsel for the parties.

The District Magistrate, Kaimur (Bhabhua) is hereby directed to file an affidavit pursuant to the charge memo dated 27.09.2014 and its conclusion in imposition of penalty on 08.05.2015 whether is here any compliance to sub-Rule 14 to 19 of Rule 17



and further whether is there any compliance to sub-Rule 3 of Rule 18 and further whether extraneous materials like obtaining opinion of the B.D.O. and relying on B.D.O's case which is not part and parcel of article of charges dated 27.09.2014 to the extent that whether B.D.O. cited as witness examination and cross-examination of these issues shall be reflected in the affidavit to be filed by the District Magistrate before the next date of hearing.

Re-list this matter on 20.12.2021."

In compliance to the order dated 06.12.2021 Block Development Officer, Ramgarh, Kaimur filed supplementary affidavit on behalf of respondent nos. 2 and 3. Paragraph nos. 15 and 24 reads as under:

"15. That the Presenting Officer on behalf of the prosecution the then BDO, Ramgarh was also served show cause/explanation submitted by the petitioner to submit his response by the Disciplinary Authority cum District Magistrate, Kaimur vide letter dated 25.03.2015 which was following establishment Deputy Collector, Kaimur vide letter dated 28.04.2015 (Available as Annexure-L of the counter affidavit). The presenting Officer cum BDO, Ramgarh



submitted his respondent vide letter no. 478 dated 30.04.2015 (Available as Annexure-L/1 of Counter affidavit).

24. That from the entire order sheet of departmental proceeding neither the presenting officer nor the writ petitioner has produced their oral evidence, hence no question ever has arisen for their cross examination.”

In the light of the fact that the respondents have admitted that there is non-compliance to various provisions of CCA Rules, 2005. In particular, there is non-compliance of Sub-Rule 14 to 19 of Rule 17 and so also Sub-Rule 3 of Rule 18. That apart, disciplinary authority, on receipt of inquiring officer's report, passed an order of penalty with reference to the material available on record (inquiry proceedings). On the other hand, he has sought opinion of the BDO and taking note of BDO's communications proceeded to impose penalty, the same has not been appreciated by the appellate authority in respect of non-compliance of various provisions of CCA Rules, 2005.

Accordingly, the petitioner has made out a *prima facie* case so as to interfere with the order of the disciplinary and appellate authority dated 28.04.2015 and 27.06.2017 respectively. Therefore, order of the disciplinary and appellate



authority dated 28.04.2015 and 27.06.2017 are set aside.

Hence, the present writ petition stands allowed.

In the result, the petitioner shall be reinstated into service as Najir with all monetary benefits from the date of dismissal till reinstatement within a period of two months from the date of receipt of this order.

(P. B. Bajanthri, J)

Ankit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2022
Transmission Date	NA

