

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7448 of 2021

=====

Santosh Kumar Son of Late Shree Krishna Singh, Resident of Rahdhani Apartment, Mahesh Nagar Road No.-3A, House No.-15, Keshari Nagar, Patna-800024, at Present Posted as District-Manager, State Food Corporation, Kaimur at Bhabhua.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Bihar, Secretariat Building, Patna.
3. The Principal Secretary, Food and Civil Supply Department, Bihar, Secretariat Building, Patna.
4. The Managing Director, Bihar State Food and Civil Supplies Corporation, Khadya Bhawan, Daroga Rai Path, R Block Road No.2, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Manoj Priyadarshi, Adv.
For the State : Mr.Ajay Kumar AC to G.P. 4
For the B.S.F.C.S.C.L.(Res. No.4): Mr. Siddharth Harsh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

2 06-07-2023 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel appearing on behalf of Bihar State Food and Civil Supplies Corporation Ltd. (for brevity, 'B.S.F.C.S.C.L').



2. The petitioner, while posted as the District Manager of the State Food Corporation at Bettiah, was proceeded against on the basis of charge memo dated 12.09.2019, bearing no. 4334. Issue regarding non-filing of counter affidavit within time in the pending proceedings before the Hon'ble Patna High Court in Cr. Misc. No. 37194 of 2016, was considered at the department level, whereafter they decided to proceed against the petitioner on the basis of a show cause dated 23.12.2019, bearing memo no. 17430 (Annexure 5) to the writ petition.

3. The petitioner submitted his response thereto on 07.02.2020 (Annexure 6). The authorities, after due consideration of the petitioner's reply to the show cause, have awarded a minor punishment of censure for the period 2015-16 and withholding of one increment with non-cumulative effect vide resolution dated 01.09.2000 issued by the General Administration Department (Annexure 9).

4. Learned counsel for the petitioner submits that from bare perusal of the order of punishment, it is obvious that the Disciplinary Authority has relied upon the opinion of the Food and Consumer Protection Department, under its communication dated 14.06.2020 (Annexure 8), to arrive at a



conclusion that the petitioner was guilty of the charge of having not filed the affidavit within time in the pending proceeding before the High Court.

5. Learned counsel for the petitioner submits that their departmental opinion dated 14.06.2020 merely reiterated the opinion of the Corporation in respect of the charges, as contained in the communication dated 12.06.2020 (Annexure 7) that the petitioner was not responsible for any delay in filing of the affidavit in the pending proceedings before the High Court. In fact, the Corporation has found that the petitioner had taken due steps for filing of the counter affidavit within time. The opinion of the Corporation as well as the department in the above noted two communications, were in favour of the petitioner. The finding of the disciplinary authority is expressed to be based on Corporations decision (Annexure 7), but actually at variance with the opinion of the department. The same is thus perverse and unsustainable.

6. The other submission is that the finding is based on an opinion, a copy of which was never forwarded to the petitioner. It is further submitted that there is no procedure which allows such soliciting of opinion from the parent department before passing an order of punishment, and that also



behind the back of the petitioner.

7. Learned Counsel for the State, on the other hand, submits that for imposition of a minor penalty, the procedure prescribed under Rule 19 has been adopted by the authorities after issuing a show cause, and the petitioner's explanation has been considered. There being no procedural infirmity and compliance with Rule 19 of the CCA Rules, 2005, this Court should not interfere with the order as the scope of judicial review is confined to the decision making process and not the decision itself.

8. The submissions of the rival parties have to be viewed keeping in the background the settled parameters for judicial review of such action based on decision of the Apex Court in the case of *Union of India and Ors. Vs. P. Gunasekaran* reported in *(2015) 2 SCC-610*. The legal position is clear to the extent that normally the Writ Court is to confine its judicial review to the decision making process, but subject to certain exceptions carved out in the said judgment.

9. The instant case is covered by the exceptions inasmuch as the findings of the Disciplinary Authority that the petitioner has committed negligence in discharge of his duties are sought to be based on the opinion of the department dated



14.06.2020, which are favourable to the petitioner, and in agreement with opinion of the Corporation which has found that petitioner had immediately taken steps for filing counter affidavit, and has held the charges not proved.

10. Neither the Corporation, nor departmental opinion held the charges to be proved. In fact, both had found charges not sustainable. Findings of the disciplinary authority are thus baseless, without reference to any material whatsoever, and perverse.

11. For the reasons indicated above, this Court is of the clear opinion that the impugned order of punishment dated 01.09.2020, is unsustainable in the eyes of the law.

12. The petitioner has assailed this order by way of Memorial for availing the remedy under the proviso to rule, 24(2) of the CCA rules, 2005. His review application has also been rejected by resolution dated 07.01.2021. The submission is that the order of the Reviewing Authority shows total non-application of mind and is without assigning any reasons. The submission advanced by the learned counsel for the petitioner in respect of the order passed in review appears to be correct from bare perusal of the order, wherein the operative portion of which reads as follows:-



"उक्त दंडादेश के विरुद्ध श्री संतोष कुमार, वि० प्र० से० द्वारा पुनर्विलोकन अभ्यावेदन समर्पित किया गया। जिसकी समीक्षा अनुशासनिक प्राधिकार के स्तर पर की गयी। सम्यक विचारोपरान्त पाया गया कि श्री कुमार द्वारा पुनर्विलोकन अभ्यावेदन में जिन तथ्यों का उल्लेख किया गया है उसका जिक्र उनके द्वारा समर्पित स्पष्टीकरण में पूर्व में भी किया गया था। जिसकी समीक्षा अनुशासनिक प्राधिकार द्वारा पूर्व में की जा चुकी है तथा श्री कुमार को कर्तव्य में बरती गयी लापरवाही एवं उदासीनता के आरोपों के लिए दोषी पाते हुए उन्हें निर्दंड एवं एक वेतन वृद्धि पर असंचयात्मक प्रभाव से रोक का दंड संसूचित किया गया है।

वर्णित तथ्यों के आलोक में श्री कुमार द्वारा समर्पित पुनर्विलोकन अभ्यावेदन को अस्वीकृत करते हुए विभागीय संकल्प ज्ञापांक 7543 दिनांक 01.09.2020 द्वारा संसूचित दंड को यथावत रखा जाता है।

आदेश:- आदेश दिया जाता है कि इस संकल्प की प्रति बिहार राजपत्र के अगले असाधारण अंक में प्रकाशित किया जाय तथा सभी संबंधित को भेज दी जाय।"

13. The order of the reviewing authority is cryptic, and without assigning any reason, and shows no consideration of the petitioner's review. The conclusion in the review is also nothing more than an affirmation of the illegal order passed by the disciplinary authority on 01.09.2020. The order of the Reviewing authority therefore must also collapse, and the same is held also to be unsustainable in the eyes of law. The two



orders dated 01.09.2020 passed by the disciplinary authority and the order passed in review on 07.01.2020 are hereby quashed.

14. The petitioner would be entitled to all consequential benefits.

(Madhuresh Prasad, J)

uttam/-

U			
---	--	--	--

