

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9191 of 2021

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Arun Kumar Mishra, Son of Late Dev Narayan Mishra, resident of village-
Bishanpur, Wator, P.S.- Ashok Paper Mill, District- Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Darbhanga, District- Darbhanga
2. The Commissioner, Darbhanga Division, Darbhanga
3. The District Panchayat Officer, District- Darbhanga
4. The Sub Divisional Officer (S.D.O.) Sadar Darbhanga, District- Darbhanga
5. The Block Development Officer, Block Baheri, District- Darbhanga
6. The District Deputy Development Commissioner, Darbhanga, District- Darbhanga
7. The Block Development Officer, Keoti Block, District- Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Ram Bali Jha, Advocate
For the State	:	Mr. Anwar Karim, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 12-09-2023

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

2. The instant case appears to be an apparent case of glaring procedural lapses. The petitioner has assailed the order dated 24.12.2019 passed by the Divisional Commissioner, Darbhanga, whereby the service appeal filed by his father has been decided. The punishment of withholding of four (4) annual increments with cumulative effect has been stepped down to withholding of two (2) annual increments with cumulative effect. The basis of the order is a charge memo dated 11.06.2010



issued to the petitioner's father who was working then as the Panchayat Secretary. The charge memo alleged unauthorized absence from monthly meeting amongst other allegations of using intemperate language.

3. Learned counsel for the petitioner submits that no material was produced in the enquiry with respect to any instance of use of intemperate language by the petitioner's father. The finding of petitioner's father's absence from monthly meeting is also unfounded. Even if the same is taken to be true, then absence from a monthly meeting cannot be made the basis for visiting the petitioner with a major penalty of withholding of two (2) annual increments with cumulative effect. It is also submitted that the order of the Divisional Commissioner has modified the order passed by the District Panchayat Raj Officer, Darbhanga, dated 18.10.2014 whereby the petitioner's father was visited with the penal consequence of withholding of four (4) annual increments with cumulative effect. Bare perusal of the order shows that it is at instance of the District Magistrate, Darbhanga. It also does not take into consideration any material in the enquiry so as to arrive at the conclusion of the petitioner's father's guilt or to sustain the imposition of the major penalty on the petitioner's father.



4. Learned counsel for the State submits that the order is outcome of a proceeding based on a charge memo. The petitioner's father's absence from monthly meeting and use of intemperate language being proved, the Divisional Commissioner in all fairness has himself toned down the order of punishment. The order, therefore, does not suffer with any infirmity and requires no interference by this court.

5. Upon consideration of the rival submissions and from bare perusal of the order passed by the District Panchayat Raj Officer, Darbhanga, it is obvious that the same is not a reasoned and speaking order. It shows total non-application of mind by the District Panchayat Raj Officer as there is not even a whisper as to what material has weighed in the mind of the District Panchayat Raj Officer for concluding the petitioner's father's guilt with reference to the charges alleged, let alone to sustain the imposition of a major penalty. The relevant extract of the order of the District Panchayat Raj Officer reads as follows:-

“विभागीय कार्यवाही संचालन हेतु अनुमंडल पदाधिकारी, सदर संचालन पदाधिकारी नियुक्त किये गये। विभागीय कार्यवाही के अधीन संचालन पदाधिकारी के जाँच प्रतिवेदन में अनाधिकृत रूप से अनुपस्थित रहने एवं सरकारी कर्मचारी के आचरण के विरुद्ध आचरण करने का आदेश प्रमाणित पाया गया है।

अतः जिलाधिकारी, दरभंगा के आदेश दिनांक 14.10.2014



के आलोक में प्रमाणित आरोप के लिए श्री देव नारायण मिश्र पंचायत सचिव प्रखंड बहेड़ी का चार वार्षिक वेतन वृद्धि संचयात्मक प्रभाव से रोका जाता है तथा उनके विरुद्ध संचालित विभागीय कार्यवाही समाप्त की जाती है। प्रखंड विकास पदाधिकारी, केवटी अधिरोपित दण्ड की प्रविष्टि श्री मिश्र के सेवापुस्त में करेंगे।”

6. *Prima facie* the same is unsustainable as being apparently at the dictates of the District Magistrate who under a communication dated 14.10.2014 has sent some directives based on which the District Panchayat Raj Officer has found the charge proved. The letter of the District Magistrate is alien to the proceedings. It is nobodies case that the letter of the District Magistrate, Darbhanga dated 14.10.2014 was ever shown to the petitioner's father. Further, it is also to be found that the order does not refer to any material in the records and shows total non-application of mind by the District Panchayat Raj Officer. The same, for the above reasons, is unsustainable.

7. The Divisional Commissioner in the order dated 24.12.2019 also has not taken into consideration this aspect of the matter. Merely by considering the punishment awarded by the District Panchayat Raj Officer to be excessive and disproportionate, he has awarded a lesser punishment and interfered in the quantum. The glaring procedural lapse and infirmity regarding total non-application of mind by the District



Panchayat Raj Officer and passing of the penal order at the dictates of the District Magistrate, without even affording the petitioner's father copy of the communication dated 14.10.2014 issued by the District Magistrate, were glaring infirmities which have been overlooked by the Divisional Commissioner.

8. The order of the District Panchayat Raj Officer, Darbhanga, dated 18.10.2014, therefore, and in view of the above lapses is found to be unsustainable in the eyes of law and hereby quashed. In view of such conclusion, the order of the Divisional Commissioner, Darbhanga, in Service Appeal No. 4 of 2018, which is an affirmation of the illegal order passed by the District Panchayat Raj Officer, must also collapse. The order of the Divisional Commissioner dated 24.12.2019 is also quashed.

9. The Government servant has passed away during pendency of the service appeal. In view of this development, the court is of the view that the issue must now be given a quietus and the due and admissible benefits of the petitioner's father, as a consequence of quashing of the impugned orders, are required to be extended to the legal heirs within a period of eight (8) weeks from the date of receipt/production of a copy of this order.



10. Writ application is allowed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
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