IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11494 of 2013

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Chaturgun Prasad Son Of Late Banke Lal Resident Of Mohalla - Solra, Post Office - Solra, Police Station - Paraiya, District - Gaya, dismissed and retired from the post of Revenue Karamchari Belaganj Anchal, District - Gaya

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary of Bihar, Patna.
2. The Secretary of Personnel and Administrative Department, Government of Bihar, Patna
3. The Commissioner, Magadh Division, Gaya
4. The District Magistrate - Cum - Collector, Gaya
5. The Sub - Divisional Officer, Gaya
6. The Circle Officer, Belaganj, Anchal, District - Gaya

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukeshwar Dayal, Advocate Mr.Lala Sheshendra Narayan Rais, Adv. Mr. Shashank Shekhar Sinha, Adv.
For the Respondent/s	:	Mr.Ajay, G.A.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
Date : 17-01-2023

The instant writ application has been filed for following reliefs:

(i) For quashing the letter no. 195(Mu) dated 20.4.2011 issued under signature of Collector, Gaya and letter no. 132(4) dated 4.4.2011 issued under the signature of Principal Secretary, Revenue and Land Reforms Development, Government of Bihar, Patna by these letters following order has been passed.

(a) That the petitioner will not be paid any amount except subsistence allowance for the period of suspension.

(b) That 25% pension of the petitioner will be held for ever.

(c) That misappropriated amount of Rs. 33,552/- (Thirty three thousand five hundred fifty two) will be recovered from the pension of the petitioner in equal proportionate.

(ii) For commanding the respondents authorities to release the entire amount of subsistence allowance which has been withheld by clause (a) of impugned order passed under clause 43(b) of Bihar Pension Rule is not permissible under the eye of law.

(iii) For commanding the respondent authority to fix the pension of the petitioner on the basis of time to time revised pay scale with granting the scheme of A.C.P."

2. In order to assail the order of punishment, petitioner has made two-fold submissions.

3. Firstly, impugned order has been passed without considering the reply to the show cause filed by the petitioner and as such, same is bad in law. Learned counsel for the petitioner submits that in terms of Rules 18(3) and (4) of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'C.C.A. Rules, 2005'), it is mandatory for the disciplinary authority to deal with the defence of the petitioner. In this case, without considering the reply to the show cause filed by the petitioner, impugned order of punishment has been passed.

4. Secondly, learned counsel for the petitioner submits that punishment of non-payment of salary for the period of suspension has been awarded without affording an opportunity to petitioner to file his response to the purported punishment. The petitioner, in support of his submission, has relied upon some decisions of this Hon'ble Court, which have been reported in 1988 PLJR 82, 1989 PLJR 147 and 1995 (2) PLJR 616 (Smt. Vidya Sinha Vs. The State of Bihar & Ors.).

5. Learned counsel for the State, in reply, contends that the order of punishment does not suffer from any infirmity or illegality. After following the due process of law, order of punishment has been passed. He submits that orders, as contained

in Annexures 1 and 2 to the writ petition, have been passed on the basis of materials available on record and as such, same requires no interference. However, learned counsel for the State is unable to controvert the contention made on behalf of the petitioner that in the impugned order, there is no mention of consideration of reply to the second show cause filed by the petitioner.

6. Heard learned counsel for the parties.

7. From bare perusal of the impugned orders i.e. orders contained in letter no. 195(Mu) dated 20.4.2011 issued under signature of Collector, Gaya (Annexure – 1) and letter no. 132(4) dated 4.4.2011 issued under the signature of Principal Secretary, Revenue and Land Reforms Development, Government of Bihar, Patna (Annexure – 2), it is apparent that the reply to the 2nd show cause filed by the petitioner was not at all considered. The impugned order does not at all disclose the reason as to why the defence submitted by the petitioner was not trustworthy. Non-compliance of the same resulted in violation of principal of natural justice and same is also against the provisions of Rule 18(3) and (4) of the C.C.A. Rules, 2005.

8. This Court also finds merit in the submission of learned counsel for the petitioner that without giving any notice or

opportunity of hearing, the order of withholding the period of suspension is illegal, arbitrary and unsustainable.

9. Considering the aforesaid facts and circumstances of the case, this Court is in agreement with the submission of the petitioner that the order of punishment (Annexure 1 and 2 to the writ petition) cannot be legally justified. Similarly, the second punishment of withholding of salary during suspension period has been imposed without affording any opportunity of hearing to the petitioner.

10. Considering the same, impugned orders i.e. orders contained in letter no. 195(Mu) dated 20.4.2011 issued under signature of Collector, Gaya (Annexure – 1) and letter no. 132(4) dated 4.4.2011 issued under the signature of Principal Secretary, Revenue and Land Reforms Development, Government of Bihar, Patna (Annexure – 2) are set-aside and quashed and the matter is remitted to the respondent authorities with liberty to proceed afresh in accordance with law after giving due opportunity to the petitioner and pass appropriate order in accordance with law.

11. As the case is old one, it is expected that necessary orders will be passed by the respondents authorities within a period of six months from the date of receipt / production of copy of this order.

12. The writ petition stands allowed to the extent mentioned above.

(Prabhat Kumar Singh, J)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.01.2023
Transmission Date	N/A