

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24093 of 2013

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Madhusudan Prasad S/O Late Ram Bhagan Prasad Resident Of Mohalla -
Rangbahadur Road, Near Rani Bigha Estate Tel Bigha, P.S. Kotwali, District -
Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Magadh Division, Gaya
3. The Collector Cum District Magistrate, Gaya
4. The Dy. Collector, Establishment, Gaya
5. The Conducting Officer Cum Executive Magistrate, Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Singh, Adv.
For the Respondent/s : Mr. Rishi Raj Sinha, SC-19
Mr. Atul Shankar, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 10-08-2023

The present writ petition has been filed for quashing the order dated 22.11.2012, passed by the Deputy Collector, Establishment, Gaya i.e. the Respondent No. 4 herein, whereby and whereunder the earlier punishment order has been affirmed.

2. The brief facts of the case are that while the petitioner was in service, a memo of charge dated 22.11.1994 was served upon the petitioner, containing various allegations, primarily pertaining to non-production of original files relating to Raj Kamal Circus as also relating to Sairat settlement concerning the Pitripach Mela, causing financial loss to the State government.



3. It appears that an enquiry was conducted, whereafter an enquiry report dated 6.9.2019 was submitted, wherein the Enquiry Officer had though found charge no. 1 to have not been proved but he had found charges no. 2, 4 and 5 to 11 to have been partly proved. Thereafter, without issuing any second show cause notice, the District Magistrate, Gaya, had passed the impugned order dated 30.9.1995, inflicting punishment of withholding of two annual increments with cumulative effect. The petitioner had then filed an appeal, however, the same was also rejected, vide order dated 19.5.1998.

4. The petitioner had then preferred a writ petition bearing CWJC No. 7995 of 1998, assailing the findings of the enquiry report, the order of punishment dated 30.9.1995 and the appellate order dated 19.5.1998, whereupon a coordinate Bench of this Court, by a judgment dated 23.1.2012, had not only quashed the finding of the enquiry officer, but had also quashed the order of punishment and the appellate order, whereafter the matter was remanded back to the Respondent authorities for reconsideration afresh and it was directed that since the petitioner has superannuated from service, the process of enquiry should be completed within eight months. However, this Court finds that instead of conducting the enquiry afresh, the



District Deputy Collector, Establishment, Gaya, donned upon himself the role of an enquiry officer and issued a fresh show cause to the petitioner and thereafter, passed the impugned order dated 22.11.2012, restoring the punishment, inflicted upon the petitioner earlier, by an order dated 30.9.1995, passed by the District Magistrate, Gaya.

5. The learned counsel for the petitioner has submitted, by referring to the directions, issued by a coordinate Bench of this Court, vide judgment dated 23.1.2012, in the earlier round of litigation that the enquiry was required to be conducted by the Enquiry Officer afresh, however, no fresh enquiry has been conducted by the Enquiry Officer, hence, the findings of the Respondent No. 4, in the impugned order dated 22.11.2012, is non-est in the eyes of law on account of the fact that after the aforesaid judgment of this Court dated 23.1.2012, no enquiry report is in existence, thus, without there being any finding by the Enquiry Officer, the Respondent No. 4, who is also not the disciplinary authority, had no jurisdiction to proceed in the matter and restore the punishment order dated 30.9.1995.

6. Per contra, the learned counsel for the State has though submitted that on remand, the Respondent No. 4 has adhered to the principles of nature justice, issued a show cause to the



petitioner, obtained his reply and then upon application of mind, has passed the impugned order dated 22.11.2012, but he has not been able to deny the fact that the order of this Court dated 23.1.2012, passed in the earlier round of litigation, has not been complied with in its true letter and spirit.

7. Having regard to the facts and circumstances of the case, this Court finds that the earlier order, passed by a coordinate Bench of this Court, dated 23.1.2012 in CWJC No. 7995 of 1998, has not been complied with, inasmuch as no fresh enquiry has been conducted and since the enquiry report had been quashed, by the aforesaid judgment dated 23.1.2012, there is no findings of the enquiry officer in existence so as to enable the disciplinary authority to proceed with the departmental proceeding and inflict a major punishment, as aforesaid. This Court also finds that since the original order of punishment dated 30.9.1995, passed by the District Magistrate, Gaya and the appellate order dated 19.5.1998, were both quashed, by a coordinate Bench of this Court, vide judgment dated 23.1.2012, the Respondent No. 4 herein, who is also not the disciplinary authority, had no authority to done upon himself the role of a disciplinary authority and proceed further with the disciplinary proceedings in question, hence, his such action is patently illegal



and in teeth of the aforesaid judgment dated 23.1.2012, thus, the impugned order dated 22.11.2012, passed by the Respondent No. 4, is quashed, being not only perverse, but also arbitrary and contrary to law. Consequently, the Respondents are forthwith directed to calculate and pay the arrears of salary on account of quashing of the order of punishment dated 22.11.2022.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.09.2023
Transmission Date	NA

