

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8028 of 2022

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Raju Prasad, Son of Late Ram Chandra Prasad, Resident of Ram Sahay Lane,
Mahendru, P.S.-Sultanganj, Town and District-Patna 800006.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Treasury Officer, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Tewari, Advocate
Mr.Lal Mani Sharma, Advocate
For the Respondent/s : Mr. Ravi Ranjan, AC to SC-22

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 28-04-2023 Petitioner in the present case is seeking the following

reliefs:-

“(i) For issuance of a writ in the nature of Certiorari for quashing of the order contained in Memo no.1103 dated 9-5-22 (Anx.-25) passed by the District Magistrate, Patna by which in exercise of the power conferred under Rule 14(ix) of the Bihar Government Servant (Classification, Control and Appeal) Rules-2005 as amended 2007, by way of punishment the District Magistrate, Patna has imposed punishment to the petitioner of compulsory retirement of the petitioner w.e.f. the date of issuance of the said order i.e. w.e.f. 9-5-22.

(ii) For issuance of an appropriate writ directing and commanding the respondents to give the petitioner all consequential benefits including to allow the petitioner to continue in his service till the date of retirement of the petitioner as well as payment of arrear salary to the



petitioner after quashing of the aforesaid order contained in Memo no.1103 dated 9-5-2022 (Anx.-25).

(iii) For any other relief/reliefs of which the petitioner is legally entitled to.”

2. I.A. No.01 of 2022 has been filed seeking the following reliefs:-

“1. That this an application on behalf of the petitioner for stay of the operation of the orders contained in Memo no.711 dated 6-6-2022 (Anx.-28) issued under the signature of the Senior Treasury Officer, Patna Treasury, Patna the respondent no.4 by which, in the light of the impugned order dated 9-5-2022 (Anx.-25) by which the petitioner has been compulsorily retired from service by way of punishment, the respondent no.4 has calculated the amount of Earned Leave for 300 days payable to the petitioner and also for stay of the operation of the order contained in Memo no.712 dated 6-6-2022 (Anx.-29) issued under the signature of the respondent no.4 by which the District Provident Fund Officer, Patna has been asked to issue the Authority letter for payment of the amount of his General Provident Fund to the petitioner immediately so that the order may be complied, during the pendency of the present writ petition. The application is further directed to allow the petitioner to add/implead the District Provident Fund Officer, Patna as party respondent in the present writ petition.”

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



Brief facts of the case

4. The petitioner was working as an Accountant in the Bihar State Food and Civil Supplies Corporation (hereinafter referred to as 'the Corporation'). He was brought on deputation in the treasury on the post of treasury clerk. Over the period, vide Resolution No.2716 dated 24.04.2007 the State government absorbed the petitioner in the cadre of treasury clerks of the treasury with effect from 08.03.2006.

5. It is the case of the petitioner that the employees of the treasuries including the petitioner belong to a district cadre of the employees and they can be transferred only within their cadre from one treasury to another treasury or the sub-treasury by the concerned District Magistrate. According to him, the employees of the treasury cannot be transferred to any other cadre or in any other office i.e. in the Block office on the post of clerk which is not the post of accountant. The post of clerk belongs to the cadre of clerks of the Collectorate. In the aforementioned background, the petitioner, who was due to retire from service in January, 2023, was transferred by the District Magistrate, Patna vide memo no.1501 dated 22.06.2021 from the office of Patna treasury and was posted in the Block office, Ghoswari on the post of clerk, he challenged the order of



transfer in this Court by filing a writ application being CWJC No.12603 of 2021. This Court entertained his writ application and vide judgment dated 14.02.2022 allowed the writ petition by setting aside the order dated 22.06.2021 by which the petitioner had been transferred and was deemed to have been relieved from 01.07.2021.

6. It appears that because the petitioner did not join on the transferred place, he was served with Prapatra 'Ka' alleging that by not joining at the transferred place he had shown indiscipline and insubordination.

7. The petitioner sought to challenge the said initiation of proceeding against him by filing I.A. No.1 of 2022 in CWJC No.12603 of 2021, however, this Court rejected the same saying that the challenge to the charge memo cannot be permitted in the writ application which was filed against the transfer order. The Court permitted the petitioner to file independent petition.

8. In the aforementioned background, the present writ application has been filed.

Submissions on behalf of the petitioner

9. Learned counsel for the petitioner submits that on a bare perusal of the memo of charge and the subsequent decision



making process, it would appear that the only charge against the petitioner was that he had not joined at the transferred place pursuant to the office memo no.1501 dated 22.06.2021. It is further submitted that the disciplinary proceeding has been conducted in complete violation of the principles of natural justice. Referring to the impugned order as contained in Annexure- '25' to the writ application by which the petitioner has been awarded punishment of compulsory retirement, learned counsel submits that the disciplinary authority has passed the impugned order in complete haste and without looking into the statements of defence and the second show cause of the petitioner.

10. It is submitted that the disciplinary authority could not appreciate that the order of transfer violation of which has been alleged against the petitioner could not sustain the test of law in this Court and this Court had already quashed the same as back as on 14.02.2022.

Submissions on behalf of the State

11. Learned counsel for the State has after going through the writ application and the counter affidavit of the State submitted that on perusal of the records it is evident that the only charge against the petitioner was that he had violated



the order of transfer. Learned counsel submits that the impugned order has been passed taking note of the second show cause of the petitioner.

Consideration

12. Having heard learned counsel for the petitioner and the State and on perusal of the records, this Court finds that the charges framed against the petitioner were that he had not complied with the order of transfer as contained in memo no.1501 dated 22.06.2021 whereby he was transferred from Patna treasury to the Block office, Ghoswari. This is said to have been in violation of Rule 3(1)(i)(ii)(iii) of the Bihar Government Servant Conduct Rules, 1976. This Court finds from the records that the impugned order has been passed by simply taking note of the charges against the petitioner and the fact that an enquiry report has been received showing the charges proved. The impugned order nowhere discusses the statements of the defence and the second show cause of the petitioner. No consideration at all has been given to the fact that the order of transfer was not sustainable and this Court has set aside the same on 14.02.2022.

13. This Court, therefore, finds that the impugned order is bad in law, it suffers from violation of principles of



natural justice. Having said so, this Court is of the opinion that the kind of charge framed against the petitioner cannot be proceeded with as the order of transfer violation of which has been alleged has already been quashed and cancelled by this Court vide judgment dated 14.02.2022 passed in CWJC No. 12603 of 2021.

14. In the facts and circumstances stated hereinabove, the impugned order contained in Memo No.1103 dated 09.05.2022 (Annexure- '25') as well as the charge against the petitioner are set aside and quashed respectively. The petitioner who has already attained the age of superannuation on 31.01.2023 shall be entitled for the consequential benefits of salary and other allowances.

15. The writ application as well as the I.A. No.01 of 2022 are allowed.

(Rajeev Ranjan Prasad, J)

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