

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10132 of 2022

Amresh Kumar Mishra son of Sri Rajeshwar Mishra, resident of Village-Gajadharpur, P.O.- Itwa, P.S.- Mohanpur, District- Gaya, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
3. The Secretary, Rural Development Department, Govt. of Bihar, Patna.
4. The Deputy Secretary, Rural Development Department, Govt. of Bihar, Patna.
5. The District Magistrate, Vaishali namely, Yashpal Meena, IAS, the then District Magistrate, Nawada, currently posted as District Magistrate, Vaishali.
6. The District Magistrate, Nawada.
7. The Additional Collector and the then In-charge, District Development Commissioner, Nawada.
8. District Public Grievance Redressal Officer, then DDC Incharge, Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate Ms. Riya Giri, Advocate
For the Respondent/s	:	Mr. Akash Chaturvedi, AC to SC-11 Mr. Sriram Krishna, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 27-04-2023 Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Petitioner in the present case is seeking the following reliefs:-

“(i) To issue a writ/order/direction in the nature of certiorari for setting aside the notification bearing memo no.1004952 dated 16.06.2022 issued under



the signature of Secretary, Rural Development Department, Govt. of Bihar, Patna by which the petitioner has been suspended from his service with immediate effect from the post of Block Development Officer, Nadirganj, Nawada and further, petitioner's headquarters has been fixed at the office of DRDA, Nawada and also departmental proceeding has been initiated against the petitioner (Annexure-5).

(ii) To hold and declare that the initiation of departmental proceeding against the petitioner vide order dated 16.06.2022 is illegal and contrary to the provisions, especially Rule 16(3) of the Bihar Government Servant (Classification), Control & Appeal) Rules, 2005.

(iii) For declaration that the action of the respondents in suspending the petitioner from the post of BDO, Nadirganj is arbitrary and mala fide.

(iv) To issue a writ/order/direction in the nature of certiorari for setting aside all consequential action in pursuant to the order of suspension.

(v) To issue a writ/order/direction in the nature of mandamus directing the respondent to immediately resume the service of the petitioner on the post of BDO, Nadirganj, Nawada.

(vi) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

Brief Facts:-

3. The petitioner was posted as Block Development Officer in the district of Nawada in the year 2013. He was



transferred to the district of Gaya and again brought back to the post of Block Development Officer, Nadirganj in the district of Nawada. It is stated that while he was performing his duties at Nadirganj, he was served with a letter contained in memo no.15C dated 09.05.2022 issued by the Deputy Secretary, Rural Development Department, Government of Bihar, Patna by which the petitioner came to know that certain charges have been framed by respondent no.5 against the petitioner and for the same the petitioner was asked to submit his reply as to why the petitioner be not suspended from the post of Block Development Officer and a department proceeding be initiated against him.

Submissions on behalf of the petitioner

4. It is the submission of learned counsel for the petitioner that the District Magistrate, Nawada had made allegations against the petitioner and framed certain charges only with an intention to humiliate and harass him. The District Magistrate, Nawada had forwarded the allegations memo to the department. Learned counsel submits that even as the suspension of the petitioner has been revoked, his contention would be that the very initiation of the disciplinary proceeding at the instance of District Magistrate, Nawada would be bad in



law and suffers from malice in law if not in fact. Learned counsel, therefore, submits that this Court should go through the charges and consider quashing of the same at this stage.

Submissions on behalf of the State

5. On the other hand, learned counsel for the State submits that the order of suspension of the petitioner has been revoked under Rule 9 (6)(C) of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Service Rules') vide Resolution dated 01.12.2022. It is further submitted that the Department has initiated a departmental proceeding vide Resolution No.1004952 dated 16.06.2022. Learned counsel submits that on bare perusal of the memo of charges, it would appear that any adjudication on the allegations mentioned in the memo of charges would not be possible by this Court sitting under Article 226 of the Constitution of India because the adjudication would require adducement of evidences and the charges may be proved or not proved only after appreciation of the evidences which may be adduced by the parties before the enquiry officer.

6. Learned counsel further submits that the allegation of the petitioner that the District Magistrate, Nawada is proceeding against him with malafide intention is again required



to be proved in course of inquiry. No malice in law may be found at this stage as the District Magistrate forwarded the allegations in form of charges against the petitioner but it is the competent authority of the department who has approved the initiation of disciplinary proceeding and the resolution memo has been issued accordingly.

Consideration

7. Having heard learned counsel for the petitioner and the State as also on perusal of the records, this Court finds force in the submissions of learned counsel for the State. The suspension of the petitioner has already been revoked. The department has issued a resolution by which a departmental proceeding has been instituted against the petitioner. A bare perusal of the kind of charges levelled against the petitioner would show that the charges may be proved or not proved in course of departmental enquiry and for that purpose both the parties are required to adduce evidences. This Court sitting in its writ jurisdiction would not venture to go into taking evidences of the parties and appreciate the same and thereby assuming the role of enquiry officer. No malice in law has been demonstrated before this Court at least at this stage.

8. This Court, therefore, finds that the prayer of the



petitioner to quash the disciplinary proceeding itself is not fit to be accepted. This prayer has to be rejected at this stage.

9. This writ application is dismissed.

(Rajeev Ranjan Prasad, J)

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