

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12033 of 2012

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SOMNATH CHATTERJEE S/O Late Yadu Nath Chatterjee R/O Vill-Raisar,
P.S.-Kotwali, P.O.-Basudeopur, Distt-Munger, At Present Assistant , Civil
Court , Khagaria, P.S.-Chitragupta Nagar, Distt-Khagaria

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR and ORS
2. District and Sessions Judge, Khagaria Civil Court Khagaria
3. 2nd Addl. District and Sessions Judge-Cum-Deparmental Enquiry Officer
Khagaria Civil Court, Khagaria
4. Incharge Judge, Administration, Khagaria Civil Court Khagaria

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Adv. Mrs. Vaishnavi Singh, Adv. Mr. Dudh Nath Singh, Adv. Mr. Ravi Ranjan, Adv.
For the Respondent/s	:	Mr. Satya Vrat, AC to G.P. 10

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 12-12-2023 Heard Mr. Ajay Kumar Thakur, learned counsel for

the petitioner and Mr. Satya Vrat, learned A.C. to G.P. 10

appearing on behalf of the State.

2. The present writ application has been filed for
quashing the order dated 12.01.2012 as contained in Order
No. 13 (Misc.)/2012 issued under the signature of the
learned District and Sessions Judge, Khagaria by which he
has rectified/modified the previous Order No. 270
(Misc.)/2011 dated 01/05.08.2011 to the extent that the
petitioner shall not be paid any amount more than what he



had already paid as subsistence allowance for the period of his suspension.

3. The petitioner was appointed as Clerk and was posted under the Judgeship of Khagaria and he was put under suspension on the ground that on 25.02.2010 after making attendance in attendance register, he was not found on duty and without giving any information, he was found absent from his duty and the said order was communicated to him vide memo No. 647 dated 26.02.2010 and pursuant to the aforesaid order, the petitioner was also asked to file show cause within a period of three days stating therein that as to why a departmental proceeding will not be initiated against him. Thereafter, the petitioner immediately filed his show cause on 09.03.2010 in which he has stated that on 25.02.2010, he joined the duty and all of sudden, he started stomach pain and loose motion and his condition became deteriorated and he went to take medicine but his condition not did not improve, therefore, he went to doctor and after recovery, he has joined the service.

4. Learned counsel District Judge, Khagaria vide his memo No. 1223 dated 13.04.2010 has initiated departmental proceeding against the petitioner on the



ground that his explanation was not found satisfactory and the same was rejected. Learned 2nd Additional District and Sessions Judge, Khagaria was made enquiry officer with direction to submit his report within four months. Thereafter vide order No. 96 (Misc.) /2011 dated 08.03.2011, the suspension of the petitioner was revoked although departmental proceeding against the petitioner was directed to be continued.

5. The enquiry officer submitted his report before the Disciplinary Authority i.e. learned District Judge, Khagaria and without asking any second show cause from the petitioner, the learned District Judge, Khagaria on the basis of enquiry report passed on order of punishment against the petitioner as contained in Order No. 270 (Misc.)/2012 dated 01/05.08.2011 by which the petitioner was held guilty and was imposed punishment to withhold of one increment of his pay for one year. The departmental proceeding was already concluded and the petitioner remained suspended from 26.02.2010 till 08.03.2011. The petitioner filed an application before the learned District Judge, Civil Court, Khagaria to release his salary for the period of suspension. On being so, the learned District Judge,



Khagaria vide Order No. 33 (Misc.)/2012 dated 12.01.2012 modified his previous order of punishment as contained in Annexure-4 i.e. Order No. 270 (Misc)/2011 dated 05.08.2011 to the extent that the petitioner shall not be paid any amount more than what he had already been paid as subsistence allowance for the period of his suspension.

6. Learned counsel for the petitioner submits that it is settled preposition of law that the Disciplinary Authority cannot pass a fresh order imposing fresh punishment by modifying his previous order of punishment. He further contends that once the departmental proceeding is concluded and the petitioner has been imposed punishment by the original order to the extent of withholding of one increment of his pay for one year, the disciplinary authority is not allowed to pass fresh order of punishment on the basis of same inquiry, therefore, the impugned order is in gross violation of Rule 97 of the Bihar Service Code, 1952 and the same deserved to be quashed as the petitioner has not been served any notice before issuance of the order withholding his salary for the period of suspension.

7. Learned counsel for the petitioner in support his contention relied upon the following judgments rendered in



the case of ***Dipali Kundu Versus State of Bihar***, reported in ***1999 (2) PLJR 1754797***; ***Mahabir Prasad Versus State of Bihar*** reported in ***1975 (e) PLJR-HC 1753740*** and in the ***case of Kishori Lal Versus State of Bihar*** reported in ***2007 (e) PLJR-HC 1714643*** and submits that the case of the petitioner is squarely covered by the aforesaid judgments.

8. On the other hand, learned counsel for the State has rebutted the submission of learned counsel for the petitioner and contends that the impugned order No. 13 (Misc.)/2012 dated 12.01.2012 is nothing but a rectification or earlier order No. 270 (Misc.) dated 01/05.08.2011 by which the petitioner has been awarded punishment and that too the order impugned has been passed on the application (dated 08.08.2011) of the petitioner seeking release of his salary during his suspension period and for that purpose no further inquiry is required to be initiated therefore, the order impugned has rightly been passed by the learned District Judge and it does not suffer from any infirmity warranting interference of this Court.

9. Having heard the contention of the parties and materials available on record, it is observed that the moot question which has arisen in this case for adjudication is as



to whether the period during which the petitioner is placed under suspension shall either be treated on leave or on duty is required to be decided by the disciplinary authority at the time of awarding punishment after conclusion of the departmental proceeding. Here, in the case at hands, admittedly the disciplinary authority has not commented anything as to whether the delinquent/petitioner is entitled for pay and allowances for the period of suspension (26.02.2010 till 08.03.2011) in terms of Rule 97(3) of the Bihar Service Code and whether, in that situation, the period in question is to be treated as period spent on duty or absence from duty. Admittedly, it was necessary for the competent authority to pass an order under rule 97 of the Bihar Service Code immediately on the conclusion of the departmental preceding but the respondent did not pass an order as envisaged under Rule 97 of the Bihar Service Code and there is no explanation whatsoever by the respondent in the counter affidavit as to why such an order was not passed on the date of conclusion of the departmental proceeding. In such view of the matter, the action of the respondent as aforesaid is hit by Section 97(3) of the Bihar Service Code and therefore, taking note of the aforesaid discussion, the



impugned order dated 12.01.2012 as contained in Order No. 13 (Misc.)/2012 issued by the learned District Judge, Khagaria is illegal and cannot be sustained. Accordingly, the same is quashed and the respondent No.2 is directed to pay the entire difference of salary and other allowances admissible to the petitioner as expeditiously as possible preferably within a period of three months from the date of production/receipt of a copy of the order.

10. With the aforesaid observation and direction, this writ application stands allowed.

(Rajesh Kumar Verma, J)

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