

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1549 of 2018

Dr. Surendra Prasad Son of Late Ram Janam Prasad, Resident of House No. 715/A, Mohalla- Bhagwat Nagar, Behind Samrat Hospital, Post Office- Bahadurpur Housing Colony, Kankarbagh, Patna-26, Police Station- Agamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Secretary, Department of Health, Government of Bihar, Patna.
4. The Deputy Secretary, Department of Health, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Mr. Rajeev Shekhar
For the Respondent/s	:	Mr. Binod Kr. Yadav- SC18 Mr. Randhir Kumar AC to SC-18

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 09-01-2023

Heard counsel for the parties.

This writ petition has been filed by the petitioner
for following reliefs:-

“(i) for issuance of writ of *certiorari* for quashing
the order of punishment as contained in Memo No. 1098 dated
16.11.2017 as same is wholly without jurisdiction, illegal and
arbitrary.

(ii) for any other relief(s) to which the petitioner is
entitled in the facts and circumstances of the case.”

The brief facts of this case are that at the relevant



time petitioner was working on the post of Director-in-Chief, Health, Services, Government of Bihar. The petitioner has superannuated from the services on 31.12.2017. Prior to the superannuation from services, the petitioner was suspended from 13.10.2014 to 16.11.2017. The departmental proceeding was initiated against the petitioner vide Memo No. 653 dated 13.10.2014. Being aggrieved by the order of suspension and initiation of departmental proceeding, the petitioner preferred a writ application bearing CWJC No. 11268 of 2015.

Learned counsel for the petitioner makes a short submission to assail the order of punishment to the effect that the impugned order has been passed without taking into consideration the reply to the show-cause filed by the petitioner. In other words order passed by the disciplinary authority is mechanical and based on no material. He further submits that as per the Rule 18(2) and 18(4) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 wherein it has been envisaged that while passing an order under this Rule, it is of paramount importance that the authority passing the order himself should give a conscious consideration to the representation filed by the employee after due application of mind. In this regard, he has placed reliance upon a case *Md.*



Mahmudul Hasan vs. The State of Bihar & Ors. reported in 1997(2) PLJR 953.

Para-8 of the aforesaid decision is extracted hereinunder:-

“In so far as the second point is concerned, this court of the view that while passing an order under Rule 55-A of the said Rules, it is incumbent upon the authority concerned to consider the representation made by the employees and such consideration means a conscious application of mind and also a consideration of the explanation given by the employees in an objective basis. This point is, no doubt, concluded by a Division Bench judgment of this Court in the case of Dr. Rabindra Nath Singh vs. The State of Bihar and Others reported in 1983 PLJR page 92. In paragraph 10 of the said judgment the learned Judges hold that as no reason has been assigned as to why the show cause reply is unsatisfactory, the same was quashed and the learned Judges held that giving reasons in support of the order which affects a person is also the basic need of the principles of natural justice. In coming to the said conclusion in the case of Dr. Rabindra Nath Singh (supra) the learned Judges of the Division Bench have considered various authorities of the Supreme Court. This Court is in respectful agreement with the said judgment in Dr. Rabindra Nath Singh (supra) and holds that in the instant case also the impugned order suffers from the same infirmity inasmuch as the impugned order does not at all consider objectively or otherwise the explanation given by the petitioner. Therefore, the impugned order has to be quashed and this Court does quash it as being wholly without jurisdiction.”

Counsel for State is unable to controvert the aforesaid stand of the petitioner.

Having considered the submissions made on behalf



of the parties and after careful consideration of materials placed on record, this court deems it fit and proper to set aside the order of punishment as contained in Memo No. 1098 dated 16.11.2017. Accordingly, this writ petition is allowed.

(Prabhat Kumar Singh, J)

vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2023
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