

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.620 of 2023

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Dharam Nath Prasad Son of Sri Shiv Jee Prasad Village and Post- Husaini,
District- East Champaran, Presently posted as M.D. District Central Co-
operative Bank Ltd. Munger.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar.
2. The Secretary, Co-operative Department, Govt. of Bihar
3. Registrar Co-operative Societies, Govt. of Bihar, Patna.
4. Dy. Secretary, Co-operative Department, Govt. of Bihar, Patna.
5. Joint Registrar, Cooperative Societies, Patna Division, Patna-Cum-
Conducting Officer.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Prashant Kumar, Advocate
For the Respondent/s : Mr.Balram Kapri, AC to SC-26

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 04-04-2023 Heard Mr. Prashant Kumar, learned counsel for the
petitioner and Mr. Balram Kapri, learned AC to SC-26 for the State.

2. Petitioner, in the present case, has questioned the
notification bearing Memo No. 2396 dated 03.09.2021
(Annexure '13' to the writ petition) issued under seal and
signature of respondent no. 4 whereby and whereunder the
petitioner has been awarded punishment of (i) Censor and (ii)
withholding/stoppage of an annual increment with non-
cumulative effect.

3. Learned counsel for the petitioner submits that
even as the punishment imposed upon the petitioner is in the
nature of minor punishments but he has questioned the decision



making process of the competent authority on the ground of non-observance of the principles of natural justice and non-consideration of the materials available on the record.

4. Learned counsel submits that this petitioner was appointed as Assistant Registrar, Cooperative Societies through 47th combined Examination conducted by B.P.S.C.. He was posted as Probationer/Assistant Registrar Cooperative Societies, Bhagalpur Anchal, Bhagalpur where he gave his joining on 02.11.2009. The petitioner was directed to work under his controlling authority/District Cooperative Officer till completion of the probation period.

5. It is further stated that the Cooperative Department has issued notification being No. 5076 dated 26.12.2008 and notification No. 5077 dated 26.12.2008 whereunder the power of delegations have been provided to the authorities of the Cooperative Department as per the provisions of the Bihar Cooperative Societies Act, 1935 and the Rules framed thereunder.

6. It is submitted that in the present case the Cooperative Society namely, Srijan Cooperative Society was a district level cooperative society and an Assistant Registrar who was posted at Bhagalpur Anchal as Probationer had no power to



conduct inspection.

7. Learned counsel submits that during the probation period the petitioner had been sent on deputation to the office of the Registrar, Cooperative Societies, Bihar, Patna vide Notification No. 4175 dated 13.09.2011. The petitioner remained posted there from 28.09.2011 to 15.06.2012. During the period from 02.11.2009 to 27.09.2011, when the petitioner was posted at Bhagalpur, he was sent to different offices for training.

8. Learned counsel submits that all of a sudden the petitioner was served with a show cause vide Memo No. 8822 dated 13.10.2018 with one charge. It is pointed out that on bare perusal of the communication as contained in letter no. 8822 dated 13.10.2018 (Annexure '5'), it would appear that this letter is addressed to five officers of the Cooperative Department who were posted in different capacity during the relevant period (1997 to 2013) at Bhagalpur. Annexure '5' does not contain any specific allegation against anyone of them. The petitioner is named in Annexure '5' but save and except ornamental allegations that during the said period proper inspections were not carried out in the Srijan Society where huge financial irregularities and illegalities have been found, no specific allegation has been made.

9. Learned counsel submits that in the case of



Chandra Shekhar Singh when the action of the respondents was challenged in CWJC No. 55/2020 along with I.A. No. 01/2022, a learned coordinate Bench held that *“on mere perusal of the letter dated 13.10.2018, it is obvious that the same is neither a show cause nor a charge memo in terms of Rule 19 of the Bihar CCA Rules, 2005.....”*

10. Learned counsel submits that the petitioner was conferred with the power of inspection vide notification no. 565 dated 09.02.2012 after completion of the probation period. It is however stated that after conferment of power of inspection which was available to the petitioner only in respect of Cooperative Societies up to Sub-Divisional level, the petitioner was never sent to Bhagalpur. In paragraph ‘9’ of the writ application a specific statement has been made to this effect that he had not been sent back to function as Assistant Registrar, Cooperative Societies, Bhagalpur.

11. Learned counsel submits that in the case of Chandra Shekhar Singh, the learned Coordinate Bench has been pleased to quash the punishment and the consequential order dated 08.09.2021.

12. Learned counsel for the State has though filed a counter affidavit and opposed the writ application, this Court



finds that in the counter affidavit there is no denial of the statements made in paragraph '9' of the writ application. Only ornamental language has been used to say that a departmental proceeding was conducted and the allegation against the petitioner has been found true by the conducting officer whereafter the petitioner was served with a second show cause and thereafter he has been found guilty. The punishments awarded to the petitioner have been defended.

13. Having heard learned counsel for the petitioner and learned counsel for the State as also on perusal of the records, this Court finds that there is no denial of the statements made in the writ application that the petitioner was posted at Bhagalpur as a Probationer since 02.11.2009. He was placed under the controlling authority/District Cooperative Officer. There is no denial of the fact that w.e.f. 28.09.2011 the petitioner was placed in the office of the Registrar, Cooperative Societies, Patna. During his probation period, he was sent to different offices for training. There is no denial of the statement that the petitioner had no power of inspection and even after conferment of the power of inquiry and inspection vide notification no. 565 dated 09.02.2012, he could have inspected only a society up to Sub-divisional level. He had no authority to



enquire/inspect a district level Cooperative Society.

14. This Court further finds that in identical circumstance a learned Coordinate Bench of this Court has quashed the order of punishment in case of Chandra Shekhar Singh. The case of the petitioner is standing on similar footing.

15. In the nature of the materials present and discussed hereinabove, this Court is of the considered opinion that the disciplinary authority has acted in a routine and mechanical manner in awarding the punishment to the petitioner. The relevant facts which would have made a bearing upon the decision of the disciplinary authority have not been taken care of. The impugned order, therefore, suffers from non-consideration of the materials available on the record and it suffers from jurisdictional error. This Court, therefore, sets-aside the impugned order as contained in Annexure '13' to the writ application. The petitioner shall be entitled for the consequential benefits.

16. This Writ Application is allowed.

(Rajeev Ranjan Prasad, J.)

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