

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.377 of 2020

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Shiv Paswan Son of Sri Puneshwar Paswan, Resident of Mohalla-
Purenderpur, Post G.P.O., P.S. Jakkanpur, District-Patna-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Welfare Government of Bihar, Patna.
2. The Secretary Scheduled Caste and Schedule Tribe, Welfare Department, Government of Bihar, Patna.
3. The Director, Scheduled Caste and Schedule Tribe, Welfare Department, Government of Bihar, Patna.
4. The Deputy Director, Scheduled Caste and Schedule Tribe, Welfare Department, Tirhut Division, Muzaffarpur.
5. The District Welfare Officer, Hazipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahasweta Chatterjee, Advocate
For the Respondent/s : Mr. S.K. Mandal (Sc3)

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

3 01-02-2023 The petitioner by way of this writ petition assailed the order dated 16.03.2018 passed by respondents, whereby he was punished with penalty of censure and also an order was passed withholding the salary other than the subsistence allowance already paid to the petitioner. The petitioner also challenged the order dated 29.08.2018 passed in an Appeal and further the order passed on 12.09.2019. But learned counsel at Bar states that she does not press her submissions relating to the punishment, however, learned counsel submits that since the petitioner has only been punished with a minor penalty of



censure, there was no occasion to withhold the salary of the petitioner, apart from subsistence allowance during the period of suspension.

Learned counsel for the petitioner submits that no chargesheet was issued to the petitioner and without a chargesheet, the order of punishment was passed of censure, therefore, the salary for the period of suspension cannot be withheld.

Learned counsel appearing for the respondents has invited the attention to the orders passed by the Government wherein allegations have been levelled against the petitioner and proceedings were initiated under Rule 17 of the CCA Rules for major penalty. The petitioner had been suspended during the enquiry proceeding, however, on the basis of the enquiry report, the petitioner was found guilty of not following the instructions issued from time to time by the superior authority and, therefore a minor penalty of censure has been awarded.

I have considered the submissions.

This Court in Nripendra Kumar Vrs. The State of Bihar & Ors. has considered the similar position as under:-

“From perusal of above, it is apparent that an independent application of mind is necessary, after having awarded the punishment, to see whether the salary is to be forfeited or the complete salary is to be paid for the period



spent during suspension to a delinquent employee. As per Sub Clause 3 if the disciplinary authority is of the opinion that the suspension was wholly unjustified the government servant would be entitled to the full pay and allowances apart from less the subsistence allowance already paid, however, if the disciplinary authority reaches to a conclusion otherwise than he will pass a separate order. This Court finds that in the present case the Disciplinary Authority has proceeded to pass an order in mechanical manner while passing the order of punishment itself. He has not independently exercised his mind on the said aspect nor he has given the petitioner an opportunity of hearing on this said aspect.

In the circumstances, this Court deems it appropriate to set aside the said part of the order passed by disciplinary authority for forfeiture of the salary for the suspension period apart from the subsistence allowance and remands the matter back to the disciplinary authority to take an independent action in terms of Rule 11 of the CCA Rule, 2005 after giving an opportunity of hearing and also considering the fact that the punishment awarded is of a minor nature.”

Learned counsel for the petitioner has also invited attention towards a judgment passed by a Co-ordinate Bench of this Court in the case of Indu Prakash Saw Vrs. The State of Bihar reported in 2013 Vol. 3 PLJR page-1 in para-8 has held as under:-

“8.Coming to the other remaining claim of the petitioner namely for payment of full salary during his suspension, however, it would appear that no specific show cause for withholding payments other than subsistence allowance was given to the petitioner before passing of such order. It is well settled that for withholding any payment of the suspension period except subsistence allowance, a show cause is necessary to be given to the delinquent, as held by a Division Bench of this Court in the case of Sri Mahavir Prasad vs. The State of Bihar (1988 PLJR 82). To the same effect is the



decision reported in 2008(2) PLJR 56 (Kishori Lal vs. The State of Bihar & Ors), holding that salary withheld for the period of suspension without prior notice is violative of Rule 97(3) of the Bihar Service Code, 1952.

In the above view of the matter, therefore, it is held that the petitioner is entitled to his salary for the period of suspension and such period shall be deemed to be spent on duty, with all consequential benefits.”

Thus from above, this Court finds that the provisions of Rule 97 are *pari materia* to the provisions of Rule 11 of CCA Rules 2015, this Court in Nripendra Kumar(supra) has held as above.

In the present case too, the petitioner’s case therefore, shall be examined afresh by the disciplinary authority with regard to the payment to be made to him during the period of suspension by passing a speaking order. The order in this regard shall be passed expeditiously within a period of two months.

The writ petition stands disposed of accordingly.

(Sanjeev Prakash Sharma, J)

Brajesh Kumar/-
Item no.25

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