

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1502 of 2019

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Shashi Ranjan Mishra Son of late Keshav Mishra R/o Moh- Chandmari, P.O. Motihari, P.S. Motihari town, Distt. East Champaran,

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors through the Principal Secretary, General and Administrative Department, Government of Bihar, Patna
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The District Magistrate, East Champaran, Motihari
4. District Social Security Cell, East Champaran, Motihari

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha, Adv Mr. Sushil Kumar Jha, Adv
For the Respondent/s	:	Mr. Vinay Kumar Singh, Sr. Adv Mr. Venkatesh Kirti, Adv

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

3 06-03-2024 Heard counsel for the petitioner and counsel for the State.

2. Counsel for the petitioner has filed this writ petition for challenging the order dated 01.06.2014 contained in Memo No. 256 dated 31.05.2014 issued by the Collector whereby petitioner has been dismissed from his service as well as the order dated 05.12.2014 passed in service appeal no. 222/2014 by the respondent authorities.

3. Counsel for the petitioner submits that he was appointed on the post of clerk in the year 1985 and after enjoying various place of posting, he was deputed in the office



of District Social Security Cell as Nazir on 17.07.2012 and after one month of posting, he was arrested by the Vigilance Cell on the complaint of one Mukesh Kumar by the Vigilance Trap Team on 28.08.2012. Counsel submits that after his suspension was revoked and after he being released from jail, he again joined his service on 14.02.2013. Counsel submits that the petitioner was issued order contained in Memo No. 13 dated 22.01.2014 and a decision has been communicated for initiation of Departmental Proceeding followed by punishment order and subsequently, petitioner was dismissed from his service on 01.06.2014 and issued memo i.e. Memo No. 256 dated 31.05.2014 prior to the date of signing the order.

4. Counsel further submits that earlier he has moved before this Hon'ble Court but Hon'ble Court has directed to prefer appeal and petitioner, thereafter, preferred service appeal but service appeal was also dismissed. Thereafter, petitioner has filed present writ petition and challenged both the orders.

5. On legal ground, counsel for the petitioner submits that only show-cause has been issued to him at the time of memo of charge, and thereafter, no opportunity was granted to him for filing written statement and charge memo has not been issued as per performa mentioned in Bihar Government Servant



(Classification, Control and Appeal) Rules, 2005. The fatal blow made by the counsel for the petitioner that the major punishment of dismissal has been imposed upon the petitioner but second show cause has not been issued which is not in accordance with Rule-18 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

6. Counsel submits that there is absolute procedural mistake in passing the order of dismissal against the petitioner, and therefore, original order and appellate order both are illegal. In the appeal all points were raised but none of the points were considered.

7. Counsel for State on the other hand submits that dismissal order has been passed by the competent authority and the appellate order has also been passed by the competent authority. But in counter affidavit, no specific answer has come about service of second show-cause.

8. In the light of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, the dismissal is major punishment under Rule-14 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and prior to taking decision of dismissal, it is necessary under law to issue second show-cause and in the present case correct



procedure has not been accepted by the respondent authorities.

9. In this view of the matter and upon considering the argument of the parties and as well as upon perusal of the documents attached, it transpires to this Court that second show-cause has not been issued to the petitioner about which no entry has been made in the original order as well as the appellate order. So this Court has no option rather to dismiss both the order, appellate and original order. Therefore, order dated 01.06.2014 contained in Memo No. 256 dated 31.05.2014 issued by the Collector whereby petitioner has been dismissed from his service as well as the order dated 05.12.2014 passed in service Appeal No. 222/2014 by the respondent authorities is hereby set aside. However, respondents shall be at liberty to move against the petitioner further, if so required.

12. Accordingly, this writ petitioner is hereby allowed.

(Dr. Anshuman, J)

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