

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7970 of 2021

Hari Darshan Prasad Son of Late Ram Narayan Prasad, Resident of Mohalla Westlane-1, Prithivipur, Chiraiyatand, P.S.-Jakkanpur, Distt.-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Govt. of Bihar, Main Secretariat, Patna.
2. The Divisional Commissioner, Darbhanga.
3. The District Magistrate cum Collector, Samatipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Prasad, Advocate Mr. Binod Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Sheo Shankar Prasad (SC-8) Mr. Sanjay Kumar, AC to SC-8

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 13-08-2024 The petitioner has invoked constitutional writ jurisdiction of this Court under Article 226 praying for the following reliefs:-

i. For quashing of order dated 17.09.2019 passed by the Commissioner Darbhanga Division, Darbhanga. whereby while rejecting the memo of appeal of the petitioner, refused to consider the grounds of the Appeal against the order of punishment of the petitioner, holding mechanically that appellant failed to produce any fact which required reconsideration in the order of punishment and thereby upheld the order of punishment as also the finding of the enquiry officer. Since the order of the appellate authority dated 17.09.19 was not communicated to the petitioner by Commissioner Darbhanga Division,



Darbhanga so the petitioner applied for the certified copy of aforesaid order which was issued on 08.11.2019.

ii. For quashing of order of punishment of dismissal from service with immediate effect from date of issue of order bearing memo no.116 dated 27.01.2014 along with order bearing memo no. 51 dated 16.01.2018 passed by District Magistrate, Samastipur whereby and whereunder in a departmental proceeding the petitioner has been inflicted with punishment dismissal from service from the post of the clerk, Treasury office, Samastipur with immediate effect from date of issue of letter dated 27.01.2014 under Rule 165,166 of Bihar Board Miscellaneous Rules 1958 and Rule 14(XI) of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and vide the order bearing memo no. 51 dated 16.01.2018 while holding the charge established against the petitioner based on FIR, Pre trap and post trap memorandum without the same being formally proved against the petitioner observed that the dismissal from the service of the petitioner is appropriate punishment and accordingly held that the order of dismissal from service of the petitioner dated 27.01.2014 does not warrant interference /modification. Accordingly it was held that order of dismissal dated 27.01.2014 shall remain in effect as before.

iii. For quashing of enquiry report by which the enquiry officer has held the charge proved against the petitioner without examining the prosecution witness and without affording the reasonable opportunity to the petitioner for cross examination of said prosecution witnesses.



- iv. For a direction to reinstate the petitioner on the post of the clerk, Treasury office, Samastipur till 30.06.2019 with all consequential benefits and there after post retirement benefits consequent upon quashing of appellate order, punishment order of dismissal and enquiry report since the petitioner has been inflicted with punishment of dismissal from service where there is no evidence on record to establish the charges and both the order of Disciplinary authority and Appellate Authority are without assigning any reason on the basis of evidence on record.*
- v. For any relief/reliefs to which petitioner is found entitled in the facts and circumstances of the case.*

2. The factual matrix of the case, showed up unnecessary details that the petitioner while working as Clerk - cum- Assistant Treasury Officer, Samastipur was caught red handed on 4th May, 2009 on the allegation that he was taking bribe of Rs. 3,000/- from one Uma Rai, and on the basis of the said incident, Vigilance P.S. Case No. 50 of 2009 dated 09.05.2009 corresponding to Special Case No. 16 of 2009 for the offence punishable under Sections 7/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 was registered against the petitioner. Registration of the above mentioned criminal case was informed to the Controlling Officer of the petitioner. On the basis of the said report, the petitioner was initially suspended



and thereafter, departmental proceeding was initiated. An inquiry was held on the charges framed against the petitioner and he was found guilty by the Inquiry Officer. On the basis of the inquiry report, the disciplinary authority passed an order of termination against the petitioner vide order dated 27th January, 2014.

3. Subsequently, the petitioner challenged the said order before the appellate authority alleging, *inter alia*, that the provisions of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (henceforth, CCA Rules, 2005) were not complied with during inquiry and the order of dismissal was passed against the petitioner.

4. By an order dated 17th March, 2017, the appellate authority remitted the case back to the Collector for passing a fresh order after making the petitioner available a copy of the charge, list of documents which have been relied upon as well as the inquiry report and affording hearing to him. However, for passing the said order, the appellate authority took around three years. The aforesaid order dated 17th March, 2017 was under challenge before a coordinate Bench in C.W.J.C. No. 5386 of 2017.

5. The coordinate Bench recorded that in view of the



order dated 17th March, 2017, the District Magistrate, Samastipur passed an order after complying with the direction of the appellate Court dismissing the petitioner from service.

6. In the said writ petition, the subsequent order dated 15th January, 2018 was brought before the Court by filing an interlocutory application as Annexure-13. The petitioner also urged that since he retired from service, in the meantime, he cannot be governed under the CCA Rules, 2005. The coordinate Bench while disposing of the Appeal did not accept the argument made on behalf of the petitioner as Rule 23 of the CCA Rules, 2005 which provides for statutory appeals does not make any such distinction between a serving Government Servant and a retired Government Servant. The coordinate Bench also held that the disciplinary proceeding should be reckon able to the date when the petitioner serving the department. The said writ petition was disposed of directing the petitioner to approach the appellate authority and assail the order dated 15th January, 2018. The appellate authority disposed of the statutory Appeal No. 10 of 2014 on 17th September, 2019. The order shows that the petitioner was given adequate opportunity of hearing. The contention on behalf of the petitioner was recorded in the order dated 17th September, 2019



and considering the pleading and the counter pleading, the petitioner was dismissed for service. In other words, the appellate authority affirm the order of the disciplinary authority.

7. It is found from the order passed in C.W.J.C. No. 5386 of 2017, after the initial order of the disciplinary authority passed on 27th January, 2014 having been set aside and remitted to the Collector for passing fresh order after making available a copy of the charge, list of documents which have been relied upon as well as the inquiry report and accordingly hearing to him, the said order of the appellate authority was complied with by the disciplinary authority. Had it not been complied with the petitioner would not have taken part in the disciplinary proceeding. Subsequently, when the order was passed by the appellate authority, he cannot raise a grievance that the departmental inquiry was conducted violating the provisions of Rule 17 of the CCA Rules, 2005. The petitioner was further given opportunity by this Court to raise all issues before the appellate authority and accordingly, the appellate authority on due consideration of the case of the petitioner affirm the order of the disciplinary authority.

8. In view of such circumstances, I do not find any merit in the instant writ petition and accordingly, the instant writ



petition is dismissed on contest. However, there shall be no order as to cost.

(Bibek Chaudhuri, J)

Guddu/-

U			
---	--	--	--

