

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11373 of 2015

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Pandit Ashok Kumar, Son of late Narayan Pandit, Resident of village-
Sathopur P.S. Dip Nagar, P.o. Magthara, District Nalanda

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Revenue and Land Reforms
Department, Bihar, Patna
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate , Nalanda Bihar Sharif.
4. The Additional Collector Cum Senior Officer-in Charge District
Establishment Brahch, Nalanda Bihar
5. The Circle Officer, Silao, Bihar Sharif.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms.Rekha Prasad, Advocate
For the Respondent/s : Mr. Swapnil Kumar Singh, AC to GP 19

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 30-04-2024

Heard Ms. Rekha Prasad, learned counsel appearing on
behalf of the petitioner and Mr. Swapnil Kumar Singh learned
counsel for the State.

2. Petitioner has sought for quashing of second show
cause notice contained in Memo No.1447 dated 22.09.2011
issued by the Additional Collector, Nalanda and further for
quashing of order contained in Memo No.359 dated 03.03.2014
read with order contained in Memo No.529 dated 26.04.2014,
passed by the District Magistrate, Nalanda, whereby the salary
of the petitioner was reduced to the lowest grade from the date
of the order till the date of superannuation of the service of the



petitioner. Petitioner has also sought quashing for order dated 27.11.2020, passed by the Divisional Commissioner, Patna Division, Patna, by which appeal preferred by the petitioner against the order of the District Magistrate has been rejected.

3. Learned counsel appearing on behalf of the petitioner submitted that petitioner was posted on the post of Nazir/clerk in Silao Circle office from 19.03.2004 to 13.07.2006 and thereafter he was transferred to District Treasury Office, Bihar Sharif on 14.07.2006. While he was posted as Nazir at Silao, a settlement of *Sairat of Suraj Pur Pando Pokhar* was announced by the Additional Collector, Nalanda and was provisionally settled with the highest bidder Binod Kumar for a sum of Rs.5,67,000/-. The settlement was approved by the order of Commissioner, vide letter no.127 dated 10.06.2004. On the date of settlement, the settlee had deposited a sum of Rs.2,83,500/-, half of the amount of settlement in *Nazarat* and then vide letter No.1217 dated 04.10.2004, the petitioner was directed to issue provisional *Parwana* after execution of the agreement. Learned counsel further submitted that petitioner, being *Nazir* was not expected to execute agreement, nor the provisional *Parwana* was issued by him and the appropriate authority was the Anchal Adhikhari. Learned counsel further submitted that the



respondents were not aware of the very fact that no government money has been embezzled due to non-deposit of sum of Rs.5,67,000/-, rather the settllee one Binod Kumar had preferred a writ petition bearing CWJC No.15439 of 2007 before this Court, accepted the fact that he had deposited the 50% of bid amount in district *Nazarat* and no *Parwana* was issued in favour of the said writ petitioner/ Binod Kumar, nor he was given possession of *Jalkar* and after expiry of the settlement, said Binod Kumar had made a request for refund of his amount in absence of any final settlement made by the State Government in respect of fishing right. The entire amount, however, was deposited by the settllee in compliance of the order dated 03.12.2005 of the District Fishery Officer. This Court after hearing the parties found that the matter was required to be remanded back to the District Magistrate for taking proper steps for refund of the amount after holding proper enquiry in that regard. This Court had also directed the authority concerned to fix responsibility upon the official due to whom the State has been put to loss of revenue. Learned counsel submitted that in above background, the petitioner was served with a charge memo in Form “Ka” as contained in letter No.461 dated 03.03.2011 and in respect of charge no.2, a reference of CWJC



No.15439 of 2007 has been made to derive that the petitioner is the one who had put the State to revenue loss of Rs.3,83,500 which is in violation of Rule 73(1)(i)3(1)(ii) and 3(1)(iii) of the Bihar Government Servant Conduct Rules, 1976. In support, learned counsel submitted that the petitioner is not responsible for settlement or having put the government at loss, rather admittedly, in the present case, Additional Collector is the authority, who is responsible for such act and also in view of government resolution No.672 dated 04.08.2004, the power of settlement to Jalkar has been transferred to Animal Husbandry and Fisheries Department. The Animal Husbandry and Fisheries Department has already withdrawn the power of Revenue and Land Reforms Department, vide letter no.67(9) dated 07.03.2005, therefore, the question of settlement of *Jalkar* and issuance of *Parwana* cannot be sustained. Learned counsel has further submitted that the fact that local authority cannot execute or settle or issue *Parwana* to the proposed settllee in view of instruction dated 11.03.1966, issued by the Additional Secretary to the Government of Revenue Department to all the Collectors. By not considering the said government notification and clarification made therein, the second show cause issued by the Additional Collector, Nalanda, contained in Memo No.1447



dated 22.09.2011 is fit to be set aside and quashed, as a result of that, the consequential order passed by the District Magistrate, Nalanda contained in Memo No.359 dated 03.03.2014 read with order contained in Memo No.529 dated 26.04.2014 and order dated 27.11.2020, passed by the Divisional Commissioner, Patna Division, Patna are required to be quashed and set aside. Learned counsel has placed reliance upon a judgment of Apex Court passed in the case of **B.C. Chaturvedi V. Union of India and Ors.** reported in [(1995) 6 SCC 746].

4. *Per contra*, learned counsel appearing on behalf of the State submitted that the petitioner has concealed the material facts in the writ petition. The liability of placing the settlement relating records for issuance of issuance of *Parwana* and execution of agreement was upon the petitioner, who is class III employee and for the same, no direction of Collector is required. The Circle Officer was required to issue *Parwana* in favour of the settllee, the highest bidder. The petitioner after lapse of eight months had issued notice to the settllee on 24.11.2004 and 29.01.2005. After the Collector, Nalanda had directed the Circle Officer, Silao vide his letter dated 19.03.2004, he had issued provisional *Parwana* after receiving stamp fee for executing the agreement. The punishment



awarded to the petitioner by the District Magistrate vide order contained in Memo No.359 dated 03.03.2014 read with Memo No.529 dated 26.04.2014 has been passed after considering the entire materials available on record after giving due opportunity of hearing to the petitioner. The appellate authority has found no infirmity in the order passed by the District Magistrate and, as such, the writ petition deserves to be dismissed.

5. Having heard the rival submissions made on behalf of the parties, as well as, the admitted fact that while the petitioner was posted as Nazir during the period 19.03.2004 to 13.07.2006, a process of settlement of *Sairat* of *Suraj Pur Pando Pokhar* was commenced by respondents Additional Collector, Nalanda and provisionally the same was settled to highest bidder one Binod Kumar for a sum of 5,67,000/- on 10.06.2004. The settlee had deposited the half of the settlement amount in Anchal Nazarat and the rest amount was directed to be deposited in the *Nazarat* for issuance of *Parwana* but the petitioner had delayed and had shown no concern to request to highest bidder to deposit the rest amount, however, after lapse of eight months, the petitioner had issued notice to the settlee on 24.11.2004 and 29.01.2005. It is admitted that the settlee had deposited the rest amount of Rs.2,83,500/- in compliance of the



order dated 03.12.2005, directed by the District Fishery Officer. The said fact has not been considered by the Collector in the impugned order contained in Memo No.359 dated 03.03.2014 read with order contained in Memo No.529 dated 26.04.2014. This Court could only gather the said fact from the order dated 20.07.2009 passed in CWJC No.15439 of 2007, wherein the co-ordinate Bench of this Court has taken note of the said fact while disposing of the writ petition filed by the settllee / Binod Kumar in CWJC No.15439 of 2007. It is further clarified that the settlement of *Jalkar* has been transferred from district administration to Animal Husbandry and Fisheries Department vide resolution No.2442 dated 26.12.1986 and latter clarified by letter no.672 dated 04.09.2004.

6. Non-denial by the respondents can only entail that the respondents have admitted that in accordance with the existing departmental circular the jurisdiction of settlement of *Suraj Pur Pando Pokhar* is vested in Animal husbandry and Fisheries Department. The petitioner may have delayed in transferring the relevant record to the Animal Husbandry and Fisheries Department, however, in absence of any reference to that effect in the impugned order of punishment passed by the District Magistrate, I find it proper that the order cannot be



sustained in absence of material facts and discussion in that respect and, as such, second show cause issued by the Additional Collector, Nalanda, contained in Memo No.1447 dated 22.09.2011 and consequential order passed by the District Magistrate, Nalanda contained in Memo No.359 dated 03.03.2014 read with order contained in Memo No.529 dated 26.04.2014 and order dated 27.11.2020, passed by the Divisional Commissioner, Patna Division, Patna are hereby set aside and quashed.

7. The matter is remanded back to the District Magistrate-cum-Collector to pass a fresh order in accordance with law. It is expected that the petitioner may file a detailed representation before the District Magistrate by 15.05.2024 along with a copy of this order. In such circumstances, the District Magistrate is further directed to pass a reasoned order after giving due opportunity of hearing to the petitioner within a period of two months.

8. The writ petition is disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2024
Transmission Date	NA

