

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5693 of 2023

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Nand Lal Das Son of Heera Das Resident of Village- Kushaudhar, Andama,
P.O.- Kushother, P.S. Bahadurpur (phekla O.P.) District- Darbhanga, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and land Reforms Department, Old Secretariat, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department Govt. of Bihar, Old Secretariat, Patna.
3. The Additional Secretary Revenue and Land Reforms Department, Govt. of Bihar, Patna.
4. The Commissioner, Darbhanga Division, Darbhanga.
5. The District Officer, Darbhanga, District- Darbhanga.
6. The Additional Collector, District Establishment, Darbhanga.
7. The Deputy Collector, Land Reforms Sadar, Darbhanga.
8. The Circle Officer, Sadar Darbhanga, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shankar Kumar
For the Respondent/s : Mr.Md. Khurshid Alam (Aag12)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 14-11-2024

Heard Mr. Shankar Kumar, learned counsel
appearing on behalf of the petitioner and Md. Khurshid Alam,
learned (AAG12) appearing on behalf of the State.

2. The petitioner in paragraph no. 1 of the present writ
petition has sought inter alia the following relief(s), which is
reproduced hereinafter:-

*“That, this is an application on
behalf of the petitioner for issuance
of an appropriate writ (s) order (s)
direction (s) for quashing part of the
common order dated 13.2.2023
contained in memo no. 360 which is*



against the petitioner issued by the Circle Officer, Sadar, Darbhanga, District - Darbhanga stating there in that the petitioner has been awarded fine of Rs. 2,23,500/- (Rs. Two Lakh Twenty Three thousand five hundred) only under section 7(I) (Ka) of R.T.P.S. Act, reason behind this is that the petitioner has not disposed of the Mutation cases assign to him within in time limit Which is not correct and without providing proper opportunity of hearing and without full fledged departmental proceeding and without properly appreciated the facts and circumstances of the case specially the representation dated 22.10.2022 submitted by the petitioner in compliance of the order contained in memo no. 1314 dated 10.10.2022, Departmental proceeding case no. 03/22-23 issued by the Departmental proceeding conducting Officer -cum- Deputy Collector Land Reforms Sadar Darbhanga and thereafter the Respondents have stopped his salary w.e.f. June 2022 to till date without assigning any reason and further be pleased to direct them to pay entire arrears of salary as well as current salary with all consequential benefits attached to the post without any further delay and for other relief (s) for which he may found fit in accordance with law."

"Thereafter, the petitioner filed I.A. No. 01 of 2023 for modification of the prayer made in the writ application taking into consideration that after filing of the present writ application the District Officer, Darbhanga, District-Darbhanga (Respondent no. 5) has issued order contained in memo no. 871 dated 27.07.2023 stating there in that three increment with commutative effect of the petitioner has been stopped without properly appreciating the facts and circumstances of the case so it may also be quash by this Hon'ble Court."



Brief Facts

3. The brief facts of the case are that the petitioner has been appointed on the post of Revenue Karamchari and he joined his service on 28.02.1997. The petitioner did not dispose of the mutation application within the stipulated period provided under the Bihar Right to Public Service Act, 2011 (hereinafter referred to as 'the Act, 2011'). The Circle Officer, Sadar, Darbhanga, issued Memo No. 1365 dated 28.08.2021 and the petitioner filed detailed show cause on 09.09.2021. On 13.02.2023, Circle Officer, Sadar, Darbhanga without properly appreciating the facts and circumstances of the case and the representation of the petitioner dated 22.10.2022, issued common order contained in Memo No. 360 awarding punishment to the petitioner by imposing fine of Rs. 2,23,500/-. Thereafter, the salary of the petitioner has been stopped w.e.f. June, 2022 without giving any valid reason.

SUBMISSION ON BEHALF OF THE PARTIES

4. Learned counsel appearing on behalf of the petitioner submitted that the Circle Officer, Sadar, Darbhanga, without properly appreciating the facts and circumstances of the case specially the representation made by the petitioner dated



22.10.2022, in compliance of order contained in Memo No. 1314 dated 10.10.2022 arising out of Departmental Proceeding case No. 03/22-23 issued by the Deputy Collector, Land Reforms, Sadar, Darbhanga, passed the order of penalty dated 13.02.2023 contained in Memo No. 360, imposing a fine of Rs. 2,23,500/-, which is not in accordance with law. He further submitted that from perusal of the aforesaid order of punishment, it appears that it is a common order through which six persons were awarded punishment including the petitioner. He further submitted that from bare perusal of the aforesaid order, it appears that petitioner was awarded considerably huge amount of fine as compared to other five persons, without assigning any valid reason. He further submitted that the petitioner has also filed a detailed representation before the District Magistrate, Darbhanga on 10.03.2022 stating therein that part of the common order dated 13.02.2023 was passed without conducting full fledged departmental proceeding and without providing proper opportunity of hearing to the petitioner, which is in violation of principle of natural justice and the same is fit to be set aside and quashed.

5. *Per contra*, learned counsel appearing on behalf of the respondents submitted that the petitioner made inordinate



delay to verify the mutation applications. He further submitted that the departmental proceeding so initiated against the petitioner was carried out in accordance with Bihar C.C.A. Rules, 2005 and the penalty order so awarded by the respondent authorities was as per the law and the provisions of Bihar C.C.A. Rules, 2005. Learned Counsel further submitted that penalty awarded by Deputy Collector Land Reforms Sadar, Drabhanga was made under Section 7(1)(a) of the Bihar Right to Public Service Act, 2011 and both the proceedings are different in nature. He further submitted that all the due salary of the petitioner has already been paid and the petitioner to the said effect has already submitted a confirmation letter to the Circle Officer, Darbhanga (Annexure-B to the counter affidavit). There is no infirmity in the order passed by the Circle Officer.

ANALYSIS & CONCLUSION

6. Heard the parties.

7. The question involved in the present writ petition, which calls for consideration of this Court, is, as to whether, the disciplinary action taken against the petitioner on the basis of certain misconduct alleged to have been committed by the petitioner in accordance with Bihar Right to Public Service Act, 2011 (hereinafter referred to as 'the Act, 2011'). Section 4 of the



said Act prescribes the designated public servant shall provide the service notified, under Section 3 to the person entitled to obtain the service, within the stipulated time limit. The petitioner has been held that by not disposing the online mutation cases within stipulated time, the same amounts to violation of Section 4 of the Act, 2011. The order dated 13.02.2023 contained in Memo No.360 was passed by the concerned Circle Officer imposing penalty under Section 7(1)(a) of the Act, 2011, which provides for imposition of penalty at the rate of Rs. 500 per case amounting to Rs.2,23,500/-. At the same time, the petitioner has also been subjected to departmental proceeding as per the provision of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005'). Aggrieved by the order of punishment awarded under Section 7 (1) (a) of the Act, 2011, the petitioner has filed the present writ petition.

8. The question, firstly which arises is whether, prior to the action of the authority in accordance with the provision of Section 4 and imposition of the penalty under Section 7 of the Act, 2011 any opportunity of hearing was required to be provided to the petitioner before taking any penal action against the petitioner. Secondly, subsequent to the imposition of penalty



as per the provision of Act, 2011 a disciplinary proceeding initiated against the petitioner as per the provision of Bihar C.C.A. Rules, 2005, which guides the service condition of the petitioner. The procedure prescribed has been followed as provided under Article 311 (2) of the Constitution of India.

9. Law in above regard is well settled that if any penal action is taken without providing any opportunity of hearing or adequate time was not given to the petitioner, then, in want of proper opportunity will lead to failure of 'Principal of Natural Justice', the order is required to be interfered.

10. In the present case, the penalty suffered by the petitioner is penal and, at the same time, the quantum and the rate of penalty have been quantified as per the non-disposal of mutation cases. Such penal action cannot be taken against a person without giving him proper opportunity of hearing and mere show cause will not serve the purpose. On this ground itself, I am of the opinion that the penalty imposed under the provision of Act, 2011, being not in accordance with law, the order dated 27.07.2023 contained in memo no.871 is hereby set-aside and quashed.

11. Third question which arises for consideration and determination is, as to whether, on the same set of charges, for



which, the petitioner has already suffered penalty of Rs.2,23,500/- accusation levelled against him is the basis to take disciplinary action contained in the memo no. 623 dated 27.06.2022, communicated by the District Magistrate – cum – Collector considering the same charges approved for taking disciplinary action without holding proper enquiry in accordance with law can be said to be proved because petitioner has already suffered penalty of Rs.2,23,500/- amounting to misconduct. Order contained in Memo No. 1314 dated 10.10.2022 is sustainable.

12. The word misconduct has been defined in Stroud's Judicial Dictionary, which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

13. Mr. Khurshid Alam, learned AAG 12 appearing on behalf of the State, has taken this Court to Section 8 of the Act, 2011 and submitted that the Act itself provides that inefficiency of an employee, who has been assigned with public duty and has not met the target will amount to misconduct as per the provision of Section 8 of the Act, 2011, which is reproduced hereinafter:

"8. Non-Compliance Amounting to Misconduct.-
Non-compliance of the orders of the Appellate



Authority, unless pending in second appeal or modified by the Reviewing Authority, or of the orders of the Reviewing Authority shall amount to misconduct and makes the concerned person liable for actions under related provisions, including those that have been laid down for disciplinary action."

14. It has been held by the Apex Court in case of ***Union of India & Ors. vs. J. Ahmed*** reported in **(1979) 2 SCC 286** that mere inefficiency of an employee cannot constitute misconduct. On this ground also, the disciplinary action taken against the petitioner on the basis of charges levelled against him cannot be sustained.

15. A reference can also be made on the law laid down by the Apex Court in the case of ***Ram Lal v. State of Rajasthan***, reported in, **(2024) 1 SCC 175**, has made the following observations which are, *inter alia*, reproduced hereinafter:

"23. ... It is well settled that if the findings of the disciplinary authorities are arrived at after ignoring the relevant material the court in judicial review can interfere. It is only to satisfy ourselves to this extent, that we have scrutinised the material to see as to what was reflected in the record. We are satisfied that the disciplinary proceedings are vitiated and deserve to be quashed."

16. In view of the aforesaid judgment I am of the opinion that if the findings of the disciplinary authorities are arrived at after ignoring the relevant material, the court in



judicial review can interfere. I am satisfied to this extent that upon scrutiny of the entire material what is reflected from the record, the disciplinary proceedings can only be said to have vitiated in the eye of law and deserve to be quashed. In this regard I gainfully rely upon the Apex Court judgment in case of ***R.Mahalingam vs Chairman,Tamil Nadu Public Service Commission and Another*** reported in (2013) 14 SCC 379, wherein, it has laid down the scope of judicial review as regards the finding of the disciplinary proceedings with following relevant observations being reproduced below:

“The scope of judicial review in matters involving challenge to the disciplinary action taken by the employer is very limited. The Courts are primarily concerned with the question whether the enquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The Court can also consider whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the Court comes to the conclusion that the enquiry was held in consonance with the prescribed procedure and the rules of natural justice and the conclusion recorded by the disciplinary authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the disciplinary authority to impose the particular punishment except when the



same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the Court.”

17. As I have already quashed the penalty order dated 27.07.2023 contained in memo no. 871, the petitioner is first required to be suspended, if at all, any disciplinary action is required against him, then to proceed in accordance with the provision of Bihar CCA Rules, 2005.

18. Accordingly, the present writ petition stands disposed of.

19. Interlocutory Application(s), if any, also stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	26.11.2024
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