

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11721 of 2012

=====

Parmanand Singh S/O Late Girija Sharan Singh, R/O Village - Anant Sao
Thakurbari, Nala Road, Kadamkuan, P.S.- Kadamkuan, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna.
2. The Joint Secretary, Road Construction Department, Bihar, Patna.
3. The Deputy Secretary, Road Construction Department, Bihar, Patna.

... .. Respondents

=====

Appearance:

For the Petitioner	:	Mr. Abhinav Srivastava, Advocate Mr. Shubham Priyadarshi, Advocate
For the Respondents	:	Mr. Kumar Pankaj, AC to SC-5

=====

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 08-04-2024

Heard Mr. Abhinav Srivastava, the learned counsel
for the petitioner and Mr. Kumar Pankaj, learned AC to SC-5.

2. The present writ petition has been filed for the
following reliefs:

*(i) Issuance of a direction, order or writ
including writ in the nature of certiorari quashing
the order dated 18.05.2012 issued by the Road
Construction Department, Bihar, Patna by which
the review filed by the petitioner against the
notification dated 12.09.2011 issued by the Road
Construction Department, Bihar, Patna, whereby
the punishment of reduction to the lowest stage of
pay scale of Exclusive Engineer without cumulative*



effect till the date of retirement had been inflicted upon the petitioner has been rejected;

(ii) Issuance of a direction, order or writ including writ in the nature of certiorari quashing the order of punishment as contained in notification dated 12.09.2011 issued by the Road Construction Department, Bihar, Patna, whereby the punishment of reduction to the lowest stage of pay scale of Executive Engineer without cumulative effect till the date of retirement has been inflicted upon the petitioner purportedly in terms of the provisions contained under Rule 14(iv) of the Bihar Government Service (Classification, Control & Appeal) Rules, 2005, whereas the said punishment does not find any mention under Rule 14(iv) of the said Bihar CCA Rules, 2005;

(iii) Issuance of a direction, order of writ including writ in the nature of mandamus commanding the concerned respondent authorities under the State Government to extend all the benefits to the petitioner which have been denied to him on account of issuance of the aforesaid order of punishment dated 12.09.2011 in garb of a minor penalty in terms of the provisions contained under Rule 14(iv) of the Bihar CCA Rules;

(iv) Issuance of a declaration holding that the order of punishment as contained under the aforesaid notification dated 12.09.2011 is untenable in the eyes of law as the same is not in accordance with the provisions contained under



Rule 14(iv) of the Bihar CCA Rules;

(v) Any other relief that the petitioners may be found to be entitled to in the facts and circumstances of the present case.

3. Learned counsel for the petitioner submits that the petitioner was initially joined to the post of Assistant Engineer in the erstwhile Public Works Department (Hereinafter referred to as 'PWD') w.e.f., 30.09.1981.

4. Learned counsel for the petitioner submits that when the petitioner was posted as Technical Advisor at Bhojpur Road Circle, Ara, vide a letter dated 04.02.2010 issued by the Road Construction Department, Bihar, Patna, the petitioner was directed to show-cause with respect to certain allegation of irregularities alleged in terms of Rule 3(i) to (iii) of Bihar Government Servant Conduct Rules, and as such the petitioner was directed to furnish his show-cause within a period of fifteen days from the date of receipt of a copy of the said letter. The petitioner had submitted his explanation with respect to the charges levelled against him on 26.02.2010 stating the relevant aspects relating to his case, which suggests that the allegations levelled against the petitioner were highly misconceived and petitioner has not committed any irregularities.

5. Learned counsel for the petitioner submits that



without taking into consideration the submission made by the petitioner, the impugned order notification dated 12.09.2011 was issued by the Road Construction Department, Bihar, Patna, whereby it was held that the explanation submitted by the petitioner was found to be unsatisfactory and under these circumstances purportedly in terms of Rule 14 (iv) of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (Hereinafter referred to as 'Bihar CCA Rules, 2005') the punishment of reduction to the lowest stage of pay scale of Executive Engineer with non-cumulative effect till the date of his retirement, which was inflicted upon the petitioner.

6. Learned counsel for the petitioner submits that so far as punishment inflicted upon the petitioner as contained in impugned order dated 12.09.2011 is concerned, the same does not find any where mentioned in Bihar CCA Rules, 2005, which prescribed him a minor penalty in the following terms:

“(iv) Reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect.”

7. Learned counsel for the petitioner submits that the punishment inflicted upon the petitioner in the garb of the minor penalty is not tenable in the eyes of the law as the same is highly



misconceived and instead of using the expression “*reduction to the lowest stage in the time scale of pay*” by way of punishment, the punishment has been worded as “*the lowest stage of pay scale*” of the Executive Engineer, which is clearly violative of the penalty prescribed under the Rule 14 (iv) of the Bihar CCA Rules, 2005.

8. Learned counsel for the petitioner submits that there is no provision contained under Rule 14 (iv) of the Bihar CCA Rules, 2005 prescribed the punishment for reduction to the lowest stage of pay as a minor penalty and thus the entire exercise of part of the concerned respondent authority in inflicting the punishment as contained in impugned order notification dated 12.09.2011 is untenable in the eye of the law and learned counsel for the petitioner has relied upon the judgment reported in **2012 (5) SCC 242** in the case of ***Vijay Singh Vs. State of Uttar Pradesh & Ors.*** and paragraph no. 21 and 22 of the said Judgment are read as follows:

“21. Undoubtedly, in a civilized society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in criminal jurisprudence to this effect is prescribed in the legal maxim ‘nulla poena sine lege’ which means that a person should not be made to suffer penalty



except for a clear breach of existing law.”

22. *In S. Khusboo Vs. Kanniammal this Court has held that a person cannot be tried for an alleged offence unless the legislature has made it punishable by law and it falls within the offence as defined under Sections 40, 41 and 42 of the Penal Code, 1860, Section 2(n) of the Code of Criminal Procedure, 1973, or Section 3(38) of the General Clauses Act, 1897. The same analogy can be drawn in the instant case though the matter is not criminal in nature.”*

and he has also relied upon the judgment reported in **2022 SCC OnLine SC 909** in the case of **Union of India & Ors. Vs. Mahendra Singh** and paragraph no. 15, 16 and 17 of the said Judgment are read as follows:

*(xv) A three Judge Bench of this Court in a judgment reported as **Chandra Kishore Jha Vs. Mahavir Prasad**, held as under:*

“17 It is well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage : Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372 : AIR 1936 PC 253 (2)], Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098], State of U.P. V. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57].) An election petition under the rules could only have



been presented in the open court up to 16-5-1995 till 4:15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done....”

(xvi) The said principle has been followed by this Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh, wherein this Court held as under:

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.....”

(xvii) Similarly, this Court in Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal and OPTO Circuit India Limited v. Axis Bank has followed the said principle. Since the advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed. Therefore, the reasoning given by the Division Bench of the High Court that on account of lapse of time, the writ petitioner might have attempted the answer sheet in a different language is not justified as the use of different language itself disentitles the writ petitioner from any indulgence in exercise of the power of judicial review.



9. Learned counsel for the State submits that the punishment awarded to the petitioner, i.e., the punishment of reduction to the lowest stage of pay scale of Executive Engineer with non-cumulative effect till the date of his retirement under the provision contained under Rule 14(iv) of the Bihar CCA Rules, 2005 was awarded.

10. Learned counsel for the State submits that one Sri Ayodhya Upadhyay had filed a complaint petition regarding the irregularities committed in disposal of the tender of repair work under Road Division, Buxar. The matter was examined by the Department and it was found that without fulfilling the mandatory requirement technical qualifications and Department had decided to cancel the tender and show-cause notice was issued to the petitioner, who was Superintendent Engineer, Bhojpur Road Circle, Ara and Technical Advisor to Superintendent Engineer and Executive Engineer, Road Construction Department, Bhojpur. They were involved in the disposal of the said tender. The petitioner has submitted his reply to the show-cause and show-cause reply of the petitioner is satisfactory and seeing his superannuation on 31.01.2012 and after getting the approval of the Government, punishment of reduction to the lowest stage of the pay scale of the Executive



Engineer with non-cumulative effect till the date of his superannuation under Rule 14 (iv) of the Bihar CCA Rules, 2005 was awarded to the petitioner and after the punishment was awarded to the petitioner, the petitioner had filed a review petition which was duly considered and the same was rejected vide memo no. 5421 dated 18.05.2012 and the petitioner is superannuating on 13.12.2012, the punishment order cannot be effective on him, so the same punishment was not awarded to the petitioner.

11. Having heard the learned counsel for the parties and having perused the materials available on record as well as the aforesaid judgments, the Court finds that the same does not find anywhere mentioned in the Bihar CCA Rules, 2005 and the punishment inflicted upon the petitioner in the garb of minor penalty in terms of provisions contained under Rule 14 (iv) of the Bihar CCA Rules, 2005 is not tenable in the eye of law.

12. In view of the aforesaid, the order dated 12.09.2011 (Annexure-3) and order dated 18.05.2012 (Annexure-7) are quashed. The petitioner is entitled of all the consequential benefits. The respondent authority is directed to pay the same within eight weeks from the date/production of the copy of the order.



13. Accordingly, the writ petition stands allowed.

(Rajesh Kumar Verma, J)

Shahnawaz/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.05.2024
Transmission Date	NA

