

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6687 of 2018

Nand Kumar Singh Son of Late Ganesh Singh, Resident of Shastrinagar West
Ahar Road No.6, P.S.-Rampur, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Principal Secretary, Home Department, Government of Bihar, Patna.
4. The Inspector General of Police, Home (Prison) Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Adv.
For the Respondent/s	:	Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 06-03-2024

Heard learned counsel for the petitioner and
learned counsel for the State.

2. The present writ application has been filed with a very limited prayer to set aside the order contained in Memo No. 2001 dated 24.04.2017 which has been issued against the petitioner, who was working as Jail Warden by which punishment of withholding three increments with cumulative effect has been made in a *de novo* departmental proceeding conducted in contravention of Bihar Government C.C.A. Rules, 2005. In addition to that learned counsel for the petitioner has also challenged order contained in Memo No. 390 dated

16.01.2018 by which departmental appeal preferred by the petitioner against the said punishment order has been rejected by the appellate authority.

3. Learned counsel for the petitioner submits that the genesis of the order is order contained in Memo No. 7762 dated 28.12.2007 issued by the I.G. Prison, Bihar exhausting his power under Rule 22 of the C.C.A. Rules, 2005 (hereinafter referred to as 'the Rule of 2005') in which he has mentioned about a letter contained in Memo No. 1116 dated 13.02.2007. He submits that the said letter has annexed by the respondent in counter-affidavit as Annexure-E which is contained in Memo No. 1116 dated 13.02.2007 in which it has been indicated by the In-Charge, I.G. Prison, Bihar that in the light of power so vested in the appellate authority under Rule 28 of the Rule of 2005, he has decided to file a show cause within 15 days as to why the major punishment should not be passed against him and in continuation of the same, the final order imposing major punishment has been passed contained in Memo No. 2001 dated 24.04.2017 which is order impugned.

4. Learned counsel for the petitioner further submits that under Rule 28 of the Rule of 2005, the final order enhancing the major punishment has to be passed within six

months from the date of earlier punishment which has been imposed against the petitioner on 19.10.2006 contained in Annexure-P/2. He further submits that from the records, it transpires that in Annexure-P/2, the earlier order has been passed in the month of October, 2006, whereas the final order of punishment has been passed on 24.04.2017, *i.e.* after about 10 years. He further submits that the law makers have drafted Rule 29 of the Rule of 2005 meticulously and granted power to relax time limit, as well as to condone delay to the authorities competent under these Rules to make any order but the I.G. Prison, Bihar has failed to exercise power so vested in him under Rule 29 of the Rule of 2005 and has passed order under Rule 28 of the Rule of 2005 after 10 years which ought to be passed within six months only and therefore, the order is non-jurisdictional and fit to be set aside.

5. Learned counsel for the State on the other hand submits that the facts and date of orders are already on the record. On this technical point, he has no defence but on the other hand, he fairly submits that power of condonation is so vested by virtue of Rule 29 of the Rule of 2005 and this Hon'ble Court is competent to exempt or by sustaining the orders may decide that since, power is so vested in the authority under Rule

29 of the Rule of 2005, therefore, it is not necessary to pass a formal order on the same.

6. In the light of the submissions made by the parties, it is necessary for this Court to quote the said Rules contained in Bihar Government C.C.A. Rules, 2005. Rules 28 and 29 of the Rule of 2005 states as follows:-

“28. Revision- (1) *Notwithstanding anything contained in these Rules,-*

(i) the Government, or

(ii) the head of a department directly under the Government, in the case of a Government servant serving in a department or office, under the control of such head of a department, or

(iii) the appellate authority, or

(iv) any other authority specified in this behalf by the Government by a general or special order; and within such time as may be prescribed in such general or special order, may at any time within six months of the date of the order proposed to be revised, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these Rules or under the Rules repealed by the Rule 32 (from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed), after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order, or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed,

or

(c) remit the case to the authority, making the order or to any other authority, directing such authority, to make such further inquiry as he may consider proper in the circumstances of the case, or

(d) pass such other orders as it may deem fit: Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (vi) to (x) of Rule 14 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed without an inquiry in the manner laid down in Rule 17 and after giving a reasonable opportunity to the Government Servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Commission where such consultation is necessary:

Provided further that the power of revision shall be exercised by the head of department, unless-

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be commenced until after

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these Rules.

29. Power to relax time limit and to condone delay.- *Save as otherwise expressly provided in these Rules, the authority competent under these Rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these Rules for anything required to be done under these Rules or may condone any delay.”*

7. It is made clear upon bare reading of provision contained in Rule 28(1) of the Rule of 2005 that the appellate authority is competent to pass order proposed to be revised on its own motion within six months after giving opportunity, as contained in Rule 17 of the Rule of 2005 and also it is well within the power of the authority under the Rule to relax time or to condone delay but here in the present case, final order has not been passed within six months, nor power so vested in the competent authority under Rule 29 of the Rule of 2005 has ever been exhausted either to relax time limit or to condone the delay. The question of condonation of delay shall arise when authority shall take decision to provide after six months and the question of relax time shall arise when authority shall decide this matter after six months.

8. In the opinion of the Court, law makers have used both the powers to relax time limit, as well as to condone delay but the authority failed to exercise this power so vested in him by virtue of Rule 29 of the Rule of 2005 and hence, this Court has no option but to set aside the orders impugned dated 24.04.2017 contained in Memo No. 2001 and Memo No. 390 dated 16.01.2018.

9. The authority is free to take decision in accordance with the Rules laid down under Bihar Government C.C.A. Rules, 2005.

10. With this direction, the present writ application stands allowed.

(Dr. Anshuman, J.)

sadique/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.03.2024
Transmission Date	NA