

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8257 of 2018

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Kusum Kumari D/o Late Bhagirath Prasad, Resident of Mohalla- Bhikhna
Pahari, Road No. 6, P.S.- Pirbahor, Dist.- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Additional Secretary, Department of Social Welfare, Government of Bihar, Patna.
3. The Joint Secretary, Department of Social Welfare, Government of Bihar, Patna.
4. The Special Secretary, Department of Social Welfare, Government of Bihar, Patna.
5. The Deputy Secretary, Department of Social Welfare, Government of Bihar, Patna.
6. The Director Integrated Child Development Service ICDS-cum-Director Programme ICDS Directorate,
7. The Deputy Director Programme, ICDS Directorate, Department of Social Welfare, Government of Bihar
8. The District Magistrate, West Champaran.
9. The District Magistrate, Madubani.
10. The District Programme Officer, West Champaran.
11. The District Programme Officer, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Adv. Mr. Nityanand, Adv. Mr. Satish Kr. Sinha, Adv.
For the Respondent/s	:	Mr.Prashant Pratap-Gp2

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 30-04-2024

Learned Senior Counsel for the petitioner and learned
counsel for the State are present.

2. The petitioner has filed the present writ petition
with the following reliefs :-



“(i) For quashing the second inquiry report, dated 22.08.2014, contained in Letter No. 3801, submitted in Departmental Proceeding No. 04/2013, holding that the charged leveled against the petitioner is proved.

(ii) For quashing the order dated 26.03.2018, contained in Memo no. 1851, passed by Additional Secretary, Social Welfare Department, Bihar, Patna by which the petitioner has been dismissed from the service.”

3. Learned Senior Counsel for the petitioner submits that the petitioner was appointed as Child Development Project Officer (hereinafter referred as ‘C.D.P.O.’) on the basis of selection made from the Bihar Public Service Commission held on 19.05.2008. Learned Senior Counsel further submits that at the relevant time, while she was posted as the C.D.P.O., Bettiah she was ordered to take additional charge of the C.D.P.O., Gaunaha. Senior Counsel submits that a criminal case was instituted against the petitioner bearing Gaunaha P.S. Case No. 23 of 2009 and the petitioner was suspended, vide order dated 03.07.2009, on the allegation of shortage of fund. Another case was lodged against her, followed by initiation of departmental proceeding.



4. Learned Senior counsel for petitioner further submits that the petitioner participated in the departmental proceeding and submitted her show cause and an inquiry report has been submitted in which the inquiry officer has found the charges not proved against her. Senior Counsel further submits that subsequently, a second show cause was issued, to the petitioner and the petitioner submitted her reply to the second show cause, but without considering the pleadings made in the reply to the second show cause, the petitioner was held guilty and, consequently, punishment order has been passed.

5. Learned Senior Counsel for the petitioner further submits that the order passed by the disciplinary authority is without application of mind as well as without following the due procedure of law. There is gross violation of Rule 18(1) of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred as CCA Rules, 2005), as the disciplinary authority has directed to initiate a fresh inquiry which he cannot do in the light of the law laid down in the Rule 18(1) of the CCA Rule, 2005. Learned Senior counsel submits that the said order to initiate a fresh inquiry is absolutely unlawful and in the teeth of Rule 18(1) of the CCA Rule, 2005.



It is due to this reason, the order impugned is fit to be set aside and, therefore, the subsequent orders are also not sustainable.

6. Learned counsel for the State, on the other hand, submits that from the relief prayed by the petitioner, it become apparently clear that the petitioner has challenged the second inquiry report as well as the order passed by the Disciplinary Authority and not preferred to move before the Appellate Authority in the light of Rule 24 of the CCA Rules, 2005. Counsel further submits that though order has been passed by the Government but under law the petitioner has liberty to file review petition in the form of memorials.

7. In response thereof, learned Senior Counsel for the petitioner submits that in Rule 24 of the CCA Rule, 2005, the word 'may' is there and it is not mandatory.

8. In the light submission made by the parties, this Court is of the view that the petitioner ought to prefer an appeal under Rule 24(2) of the CCA Rule, 2005.

9. As such, it is directed to the Appellant Authority as mentioned in Rule 24(2) of the CCA Rule, 2005 that upon preferring the memorial/review by the petitioner within a period



of two weeks along with a copy of this order, he shall pass a reasoned and speaking order after considering all the points made in the memorial/review within 90 days. Since the general election of Lok Sabha, 2024 is going on, hence the period of 90 days shall be counted from the last date of the election.

10. However, the petitioner shall be at liberty to challenge the same before this Court as and when occasion shall arise.

11. With the aforesaid observations and directions, the writ petition stands disposed off.

(Dr. Anshuman, J)

Sudha/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	01.05.2024
Transmission Date	NA

