

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8370 of 2018

Devendra Prasad Yadav, Son of Bindeshwar Yadav, Resident of Village-
Jamaldipur, Police Station- Kharik District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Agriculture Department,
Bihar, Patna.
2. The Director Agriculture, Bihar, Patna.
3. The Joint Director Plant Protection, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amit Kumar, Adv.
For the State : Mr. Jay Prakash Sharma (AC to Ex GP-21)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 25-06-2024 Heard learned counsel for the petitioner and learned
counsel for the State.

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

I. For quashing the order contained in Memo No.378
dated 09.08.2016 issued by the Director of Agriculture, Bihar,
Patna (annexed as Annexure-1) by which the punishment of
censure alongwith withholding of two annual increments with
non-cumulative effect with all consequential monetary benefit
has been made.

II. For quashing the communication letter bearing



No.146 dated 07.03.2018 issued by the Director of Agriculture, Bihar, Patna (annexed as Annexure-2).

III. For directing the respondents to pay the petitioner his full salary for the period from 10.09.2013 to 25.08.2014 during which the petitioner was put under suspension and regularize the said period in accordance with law.

3. Learned counsel for the petitioner submits that the petitioner was appointed on the post of Plant Protection Supervisor under Agriculture Department, Bihar, Patna on 12.01.2000 and he was promoted to the next higher post namely Plant Protection Inspector. Counsel also submits that during the relevant time, the petitioner was posted as Plant Protection Supervisor, Purnea (East) and the Junior Plant Protection Officer, Purnea *vide* letter No.183 dated 05.06.2012 has reported the charges against the petitioner to the Director of Agriculture, Bihar, Patna. Counsel further submits that the petitioner has submitted his representation on 30.05.2012 for his transfer by which the Director of Agriculture issued a show cause to the petitioner *vide* letter No.2066 dated 28.11.2012 and the petitioner has submitted his explanation to the Director of Agriculture, Bihar, Patna by his representation dated 11.12.2012. Counsel submits that the petitioner was transferred



as Plant Protection Supervisor at Plant Protection Center, Rohtas *vide* Memo No.1033 dated 28.06.2013 issued by the Directorate of Agriculture, Bihar, Patna (annexed as Annexure-5). Thereafter, the petitioner submitted his joining at Rohtas before the Junior Plant Protection Officer, Rohtas, Sasaram.

4. Learned counsel for the petitioner further submits that *vide* Memo No.1466 dated 10.09.2013 (annexed as Annexure-7), the petitioner was put under suspension and another Memo No.1530 dated 17.09.2013 (annexed as Annexure-8) was issued by the Director of Agriculture, Bihar, Patna with a direction to initiate a regular departmental proceeding against the petitioner in which the Conducting Officer and the Presenting Officer was appointed. Counsel submits that memo of charge in *Prapatra-K* was also issued to the petitioner on 17.09.2013. In compliance of the charge, the petitioner has submitted his written statement and denied all the charges and at the end of enquiry proceeding, the petitioner was issued second show cause notice, but the final order has been passed by the Conducting Officer which is Annexure-1. Counsel further submits that upon perusal of Annexure-1, it becomes crystal clear that his second show cause has not been considered at all and punishment order has been passed only on the basis of



findings of the Enquiry Officer. Counsel submits that second show cause he has submitted is attached as Annexure-11 of the present writ petition. Counsel also submits that the said order of punishment has been communicated to him *vide* Memo No.378 dated 09.08.2016. In the said order, only findings/operative part of the order has been narrated and rest part has not been considered at all. Counsel submits that being aggrieved by the said order, he has preferred appeal which is annexed as Annexure-12 of the present writ petition. In response there of, only a communication has been made to him which is Annexure-2 which the petitioner has also challenged.

5. Learned counsel for the petitioner submits that the original order itself is defective as has been passed without consideration of any of his defence taken in the proceeding as in his written statement as well as second show cause. Counsel further submits that from the order itself, it transpires that the Disciplinary Authority has not considered the second show cause filed by the petitioner at all. Counsel submits that when the original order itself is bad in law and not sustainable, then automatically any further proceeding shall also be vitiated. Counsel further submits that even in the counter affidavit, the final order passed by the Appellate Authority has not been



provided to the petitioner and only intimation about rejection order of the appeal has been communicated to him.

6. Learned counsel for the State representing the Agriculture Department has not provided the copy of the Appellate order, but only intimated in paragraph no.18 of the counter affidavit that the Appellate Authority did not find any merit in the appeal filed by the petitioner and same has been rejected which has been communicated to the petitioner *vide* Annexure-2.

7. After hearing both the parties and upon perusal of the documents, it transpires to this Court that Original Authority as well as Appellate Authority has adopted a unique method for deciding the disciplinary proceeding which is unknown to law. Admittedly, the petitioner is an employee of Bihar Government and departmental proceeding has to be conducted in accordance with rules as laid down in Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 in which step wise methodology has been already described and prior to punishment, it is an essential step to consider the second show cause. From the final order, it transpires to this Court that second show cause filed by the petitioner which is Annexure-11 to the present writ petition has not been touched by the



Disciplinary Authority. Similarly, the Appellate order has neither been communicated to the petitioner nor attached in the counter affidavit.

8. As per the above said reasons, this Court is of the firm view that once the original order itself is defective, then automatically the decision of the Appellate Authority is also not sustainable though it is not attached in the writ petition. It has not been provided to the petitioner but only operative part has been communicated to him by the Director and also not produced by the respondent Agriculture Department in counter affidavit, reasons best known to the authorities only.

9. This Court is hereby set aside the order contained in Memo No.378 dated 09.08.2016 issued by the Director of Agriculture, Bihar, Patna (annexed as Annexure-1) and any order passed in appeal rejecting the memo whose communication has been made is also not sustainable in the eye of law and therefore, the communication letter bearing No.146 dated 07.03.2018 issued by the Director Agriculture, Bihar, Patna (annexed as Annexure-2) is also hereby set aside.

10. It is hereby directed to the Director of Agriculture, Bihar, Patna (respondent no.2) to pass order afresh in the disciplinary proceeding considering all the documents including



the show cause within 90 days from the date of receipt/production of the order.

11. Hence, with the aforesaid directions, the present writ petition stands allowed.

(Dr. Anshuman, J)

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