

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6686 of 2016

- 1.1. Madhuri Kumari Daughter of Late Ramchandra Mahto, Wife of Sanjeev Kumar Resident of Village- Mirjapur, P.S. Patahi, District- East Chamaparan.
- 1.2. Randhir Kumar Son of Late Ramchandra Mahto Resident of Village- Madhopur Roshan @ Bhisra, P.S.- Dumra, District- Sitamarhi.
- 1.3. Vibha Kumari Daughter of Late Ramchandra Mahto, Wife of Sanoj Kumar Resident of village- Sonaul Mahodat, P.S Majorganj, District- Sitamarhi.
2. Sri Narayan Mahto, Both son of Late Nankhu Mahto, Resident of village- Madhopur Rosan @ Bhisra, P.O.- Amghatta, P.S. Dumara, District- Sitamarhi

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commisioner, Tirhut Pramandal, Muzaffarpur
3. The Collector, Sitamarhi
4. The Additional Collector, Sitamarhi
5. The Additional Collector Revenue, Sitamarhi
6. The Deputy Collector, District Establishment, District- Sitamarhi
7. The Block Development Officer, Bokadhan, Sitamarhi

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rikesh Sinha, Advocate
For the Respondent/s : Mr. Manish Kumar, AC to AAG 6

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 04-01-2024

Heard Mr. Rikesh Sinha, learned counsel for the petitioners and Mr. Manish Kumar, learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for quashing the order dated 30.01.2016 passed by the respondent no. 3 by which the penalties were imposed upon the father of the



petitioner nos. 1.1, 1.2, 1.3 and petitioner no. 2 (hereinafter referred to as petitioners) for reduction to lower stage/grade in the time scale and after reduction increments except subsistence allowance no other pay allowance will be paid to the petitioners.

3. Learned counsel for the petitioners submits that the father of the petitioner nos. 1.1, 1.2, 1.3 and petitioner no. 2 are clerk in the Sitamarhi district and they along with 5 to 6 accused persons were convicted for offences under Sections 324/149 of the Indian Penal Code. Thereafter, sentenced to undergo RI for two years and fine of Rs. 1,000/- each in Sessions Trial No. 660 of 2005 passed by learned Additional Sessions Judge, F.T.C. No. 3, Sitamarhi on 12.01.2010.

4. He further submits that the petitioners and other convicted persons were granted provisional bail by the learned Additional Sessions Judge, Sitamarhi on the same day i.e. 12.01.2010. Thereafter, they have filed Cr. Appeal (SJ) No. 76 of 2010 challenging the order dated 12.01.2010 passed in Sessions Trial No. 660 of 2005. The Hon'ble Court after hearing the parties has been pleased to admit the appeal and confirmed the provisional bail of the petitioners vide order dated 04.02.2010.

5. Learned counsel for the petitioners submits that one



Kishore Rai has informed the authority concerned that the petitioners are convicted in the criminal case and on the basis of the information provided by Kishore Rai, the petitioners were directed to file show cause vide memo no. 220 dated 11.03.2010 asking them why the departmental proceeding will not be initiated against them. Thereafter, the petitioners were suspended by memo no. 551/Est. Dated 10.06.2010 but the suspension was revoked by memo no. 6378/Est. Dated 06.07.2010.

6. Learned counsel for the petitioners submits that the petitioners have filed their written statement of defence before the Conducting Officer on 22.12.2010 and prayed therein to stay the departmental proceeding till the disposal of Cr. Appeal (SJ) No. 76 of 2010 which is pending for adjudication before the Patna High Court.

7. The Additional Collector-cum-Conducting Officer, Sitamarhi by order dated 18.02.2011 gave his finding that the departmental proceeding can be completed after disposal of Cr. Appeal (SJ) No. 76 of 2010.

8. The respondent no. 3 disagree with the order of Additional Collector-cum-Conducting Officer and appointed respondent no. 5 as Conducting Officer to again conduct the



departmental proceedings against petitioners and also directed the respondent no. 5 to conduct the same within a period of one month. The petitioners filed their written statement of defence on 13.01.2014 and prayed therein not to initiate departmental proceeding till the disposal of Cr. Appeal (SJ) No. 76 of 2010 which is pending for consideration in the Hon'ble High Court.

9. Learned counsel for the petitioners submits that in light of the memo no. 81/Est. Dated 23.01.2015 the petitioners filed their second show cause on 12.02.2015. He further submits that without considering the contention of the petitioners, penalties have been imposed upon the petitioners vide order dated 30.01.2016 which are as follows:-

- (i) The petitioners will get pay in reduced time scale with effect from the date of the issuance of the order and increment in pay will be admissible to the petitioners after reduction in time scale.
- (ii) The petitioners will get no pay for the period of suspension except the subsistence allowance.

10. Learned counsel for the petitioners submits that the authority without considering the fact that the Cr. Appeal (SJ) No. 76 of 2010 is pending before the Patna High Court and the petitioners have been granted bail by the learned Additional



Sessions Judge, F.T.C. No. 3, Sitamarhi on the same day and the petitioners have been inflicted with the aforesaid punishments.

11. Learned counsel appearing on behalf of the State has filed a detailed counter affidavit stating that the petitioners were convicted for offences under Sections 324/149 of the Indian Penal Code and were sentenced to undergo RI for two years along with a fine of Rs. 1,000/- each accused on the same day the petitioners were granted provisional bail and on the basis of the complaint of Kishore Rai, the order of sentence imposed upon the petitioners which was sent to the Collector, Sitamarhi by the Secretary to Commissioner, Tirhut Division, Muzaffarpur vide letter no. 1760 dated 26.03.2010 and when the authority came to know about the above mentioned punishments imposed upon the petitioners, the petitioners were asked to submit their explanation and after considering the same and in light of the instruction contained in letter no. 2314 dated 10.07.2007 issued by the Department of Personnel and Administrative Reforms, Bihar, Patna, the petitioners were suspended and departmental proceeding were initiated against them. In the light of the report of the Conducting Officer, second show cause notice was issued to the petitioners vide memo no. 81/Est. Dated 23.01.2015 against which the



petitioners submitted their reply but the same was not found satisfactory.

12. In the light of the provision contained in letter no. 7820 dated 28.10.2003 “Under proviso (a) to article 34(2) of the constitution a government servant may be dismissed or removed or reduced in rank without being put through departmental proceedings on the ground of conduct which has led to his conviction on a criminal charge. Government desire that this proviso should be fully utilized.” He further submits that though the Cr. Appeal (SJ) No. 76 of 2010 filed by the petitioners against the order dated 12.01.2010 was admitted by the Hon’ble High Court but the the Hon’ble Court has not stayed the order dated 12.01.2010 passed in Sessions Trial No. 660 of 2005. And as per the Rule 3(1) (iii) of the Bihar Government Servants Conduct Rules, the conviction against any government servant by a criminal court is to be treated in the category of misconduct.

13. Under provision contained in Rule 14 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 as amended 2007 and 2010 the departmental proceeding initiated against the petitioners and the same was conducted in accordance with rule and ample opportunities was given to the



petitioners and after following the principle of natural justice the impugned order has been passed and there is no infirmity in the order.

14. In view of the aforesaid, there is no merit in the writ petition and same stands dismissed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.02.2024
Transmission Date	N/A

