

Md. Faiyaz Ansari Son of Late Md. Amin Ansari, Resident of Mohalla
Stuwarganj, Ward No. 07, P.S.Mohania, District Kaimur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Additional Chief Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Engineer -In-Chief Cum Special Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Joint Secretary, Water Resources Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Prabhat Ranjan, Adv
For the Respondent/s : Mr.Government Pleader 25

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 23-09-2024 Heard Learned Counsel for the petitioner and
Learned Counsel for the State.

2. The present writ petition has been filed for quashing of the order no. 123 dated 28.11.2017 as contained in Memo No. 2064 dated 28.11.2017 (Annexure P/2) by which without following the statutory procedure/pre-requisites, straight away proceedings have been initiated for infliction of major penalties under Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (Hereinafter referred to as the Rules of 2005) and Conducting Officer as well as Presenting Officer have been appointed. Further prayer, has been made for



quashing of the Supplementary charge-sheet dated 08.02.2018 which has been issued during the pendency of the Departmental Proceedings and further prayer has been made for quashing of the Enquiry Report dated 25.10.2021 by which the Conducting Officer has conducted the enquiry in violation of the provisions of the Rules of 2005 and further to notify about dropping the pending Departmental Proceeding against the petitioner which was initiated vide order No. 124 dated 28.11.2017.

3. Learned Counsel for the petitioner submits that by the present writ petition, Charge Memo, Supplementary Charge-Memo, Consequential Enquiry Report, Second Show-cause all were challenged. Further request has been made to drop the departmental Proceeding which was initiated vide order no. 123 dated 28.11.2017 in which instead of passing final order, suspension of the petitioner has been revoked. Counsel submits that the said charge-memo has been issued in gross violation of Rule 17(3) of the Rules of 2005. In support of his argument, Counsel relied on the provisions made in Rule 17(3) of the Rules of 2005 as well as on the Judgment passed by this Court vide order dated 03.01.2024 passed in C.W.J.C. No. 4710 of 2018 (*Dhirendra Kumar Vs. State of Bihar*), vide order dated 12.02.2024 passed in C.W.J.C. No. 4727 of 2018 (*Rajesh Ku-*



mar Vs. State of Bihar and Ors) as well as on the basis of the the judgment passed in case of *Uday Pratap Singh Vs. State of Bihar reported in 2017 (2) PLJR 195*. Learned Counsel further submits that he relied on another judgment also in case of *Keral Agricultural University and Anrs. Vs. T.P Murari @ Murari Howrah Penan and Ors passed on 04.09.2014 in S.L.P No. (Civil No.) 20817 of 2022*. Learned Counsel for the petitioner submits that the Paragraph 12 of the said Judgment is the parimateria of Rules of 2005.

4. Hence the entire proceeding may be dropped.

5. Counsel for the State opposes the prayer of the petitioner and submits that either permission may be granted to file counter affidavit or fix a time frame with a view to pass final order in this matter.

6. Upon perusal of the records and hearing the argument, this Court finds that the judgments relied upon by the petitioner rendered in C.W.J.C. No. 4710 of 2018 and C.W.J.C. No. 4727 of 2018 are not identical because there is distinction between these two judgments. In the present case, the petitioner is in service while in aforesaid judgments petitioner was already retired and the State was trying to switch over the departmental proceeding under Rule 43(B) of the Bihar Pension Rule 1950.



This Court also finds that the judgment passed by the Hon’ble Supreme Court in the case of *Keral Agricultural University and Anrs. Vs. T.P Murari @ Murari Howrah Penan and Ors(Supra)* is also not application due to the reason that finding has come in the said judgment that the condition is applicable for imposing the major penalties. Here in the Rules of 2005, it is not fixed that whether petitioner is going to be punished by major punishment or by minor punishment due to the reason that Rule 19 of the Rules of 2005 which talks about imposing the minor penalties initiated after the said Rule 18(3) of Rules of 2005 also.

7. Therefore, this Court is of the view that interference at this level is not proper. However, this Court holds that it is unfortunate on the part of the State that since 2017, departmental proceeding is pending after framing of charge. Therefore, it is directed to the State to conclude the same within 60 days from today.

(Dr. Anshuman, J)

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