

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15107 of 2024**

Dr. Vibhashini Prasad, Wife of Dr. Navin Kumar, resident of 80/B, Patliputra Colony, Opposite P and M Mall, at and District-Patna-800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Health Department, Government of Bihar, Patna.
2. Additional Secretary to the Government, Department of Health, Government of Bihar, Patna.
3. Departmental Promotion Committee through its Chairman cum Development Commissioner, Government of Bihar, Patna.
4. Officer on Special Duty/Additional Secretary (18A), Department of Health, Government of Bihar, Patna.
5. Joint Secretary to the Government, Department of Health, Government of Bihar, Patna.

... .. Respondent/s

**Appearance :**

|                      |   |                                                       |
|----------------------|---|-------------------------------------------------------|
| For the Petitioner/s | : | Mr.Mukul Sinha, Advocate<br>Ms.Jyoti Kumari, Advocate |
| For the Respondent/s | : | Mr.Amish Kumar, AC to AG                              |

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

2      07-10-2024                      Indisputably, the petitioner was appointed as Civil Assistant Surgeon on 01.01.1991 in the Bihar Health Services and had been assigned rural posting in the Primary Health Centre, Baraul in the district of Gopalganj. Subsequently, she was made Medical Officer Incharge Leprosy Control Unit, Gopalganj in May 1991 and is said to have continued in the same capacity till 22.01.1994, whereafter she had applied for study leave for doing her post-graduation and, accordingly, she was relieved of her responsibility of the post of Incharge



Leprosy Control Unit. Subsequently, after completing her post-graduation, she is said to have continued with her different assignments.

2. The petitioner was subjected to departmental proceeding on 29<sup>th</sup> of July, 2000 for the alleged misconduct and disobedience of the government order relating to her period of posting as Incharge of Leprosy Control Unit in between 03.07.1991 to 22.01.1993. In the said departmental proceeding, the petitioner was dismissed from service. The said order of dismissal was challenged before this Court by filing a writ petition by the petitioner bearing C.W.J.C. No. 13150 of 2006. The aforesaid writ petition was disposed of in the year 2011 and the judgement is reported in 2011 4 PLJR 359 (HC).

3. Paragraph No. 30 to 34 of the said judgement is relevant for our purpose and quoted hereinbelow:-

*“30. This Court is therefore satisfied that Disciplinary Authority has proceeded in a mechanical manner and basically on its own assumption that since on some of the vouchers there were signature of the petitioner and there was a Government circular with regard to procurement of medicine, the action of the petitioner by itself was unwarranted. The Disciplinary Authority in fact has failed to analyse that procurement of medicine by the Incharge Medical Officer of Dispensary or Unit was the part of exercise of official duty and if any procedural infirmity was committed by such an*



*officer, the same had to be viewed in the backdrop of the job, duty and responsibility assigned to such officer. In the present case, the petitioner hardly with a service of three years was made Incharge of Leprosy Unit and was functioning under direct control of Civil Surgeon. Therefore, if the petitioner had made certain requisition which was to be countersigned by the Civil Surgeon before its being sent to MSD, Kolkata and the said requisitions were directly sent to MSD, Kolkata without signature of Civil Surgeon by the Head Clerk of the Civil Surgeon's Office the same could not have been honoured by the MSD unless there was someone in the MSD, Kolkata who had also flouted the same Government instruction. In that regard, neither the Civil Surgeon nor any one from MSD, Calcutta has been examined in course of departmental proceeding so as to suggest that it was the petitioner who had made requisition, also gone with it to Kolkata and had procured the medicine by herself for making for her own pecuniary gain. The Government Circular as noted above does not lay down such a procedure where medicine could be supplied straightway on a requisition made by the Incharge Medical Officer and therefore even if it be accepted that the petitioner had signed and sent requisition to M.S.D. the same by itself would not amount to misconduct in terms of Government Circular dated 29.1.1982.*

*31. In that view of the matter, this Court is of the considered opinion that there is complete lack of conscious application of mind to the facts of the case of the petitioner before passing the order of punishment and to that extent this Court would find that even if the charge against the petitioner to the extent it was found to have been proved by the Enquiry Officer*



*is accepted that could not warrant an order of major punishment. It is true that the doctrine of proportionality by way of judicial review of an order of punishment has to be exercised by a writ court only by way of applying the principle of balancing test and necessity test but then if the order of the punishment as with regard to the misconduct alleged would be wholly disproportionate to the misconduct alleged, the writ court can definitely direct the Disciplinary Authority to reconsider its decision as with regard to inflicting punishment. Reference in this connection may be made to the following passage the judgment of the Apex Court in the case of Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn., reported in (2007) 4 SCC 669 [ : 2007 (4) PLJR (SC) 8] which reads as follows:—*

*“34. As observed by this Court in M.P. Gangadharan v. State of Kerala the constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix in each case. It cannot be put in a straitjacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the Court must be satisfied that a case has been made out for exercise of power of judicial review. The Court observed that we are not unmindful of the development of the law that from the doctrine of “wednesbury unreasonableness”, the court is leaning towards the doctrine of “proportionality”. But in a case of this nature, the doctrine of proportionality must also be applied having regard to the purport and object for which the act was enacted.”*

**32.** Thus, this court would not like to



*substitute its own opinion as with regard to quantum of punishment against the petitioner but then for the reasons recorded above it would definitely find the case of the petitioner good enough for issuance of a direction to the disciplinary authority to reconsider the matter from the stage of submission of Enquiry Report in the light of findings recorded in this judgment as also in view of recommendation made by the CBI in the letter dated 9.12.2004, for initiating a departmental proceeding only for a minor punishment against the petitioner. The Disciplinary Authority also must confine its consideration only to the four issue vouchers specifically mentioned in memo of charge and if three of them were not related to the petitioner, its decision to inflict punishment on the petitioner if any, must be completely restricted to the sole admitted issue voucher dated 31.7.1993 for Rs. 5,31,511/-.*

*33. That being so, the impugned order of punishment dated 20.3.2006 as contained in Annexure-1 is hereby quashed and the matter is remitted back to the State Government for reconsidering the matter from the stage of submission of enquiry report in the light of observations and findings recorded above. Since the petitioner has remained out of service for a period of more than four and a half years, the necessary exercise in this regard must be completed by the State Government within a period of six months from the date of receipt/production of a copy of this order. It is made clear that any financial benefit to the petitioner will of course abide by such fresh decision of the State Government.*

*34. This writ application is, accordingly, allowed only to the extent indicated above. There would be, however, no order as to*



*costs.*”

4. From careful perusal of Paragraph No. 31 of the judgement, it is found that the disciplinary authority was directed to reconsider the matter from the stage of submission of inquiry report in the light of the findings recorded in the said judgement as also in view of recommendation made by the C.B.I. in the letter dated 9<sup>th</sup> of December, 2004, for initiating a departmental proceeding only for a minor punishment against the petitioner. The disciplinary authority was directed to confine its consideration only to the four issue vouchers specifically mentioned in the memo of charge and if three of them were not related to the petitioner, its decision to inflict punishment on the petitioner, if any, must be completely restricted to the sole admitted issue voucher, dated 31<sup>st</sup> of July, 1993 for Rs. Rs. 5,31,511/-.

5. Since, this Court directed the respondents authority to commence disciplinary proceeding from the stage after filing inquiry report in the previous disciplinary proceeding which was challenged by the petitioner, the respondents authority called for second show cause from the petitioner. The petitioner submitted second show cause, which was duly considered by the disciplinary authority. The decision of the disciplinary authority was subsequently sent to the Cabinet and on the basis of the



approval of the Cabinet final order was passed by the Governor, State of Bihar (Annexure P1) by virtue of which the order of punishment issued against the petitioner was modified by-

(a) Censor

(b) Withholding of two increments with non-cumulative effect.

6. With regard to the period of suspension and the period of dismissal which was passed earlier by the disciplinary authority against the petitioner, it was held as hereunder:-

(i) The petitioner is entitled to get full salary from December 2000 to May, 2003.

(ii) The petitioner would not be allowed any amount, above the subsistence allowance during the period of suspension (From 22<sup>nd</sup> of May, 2003 to 20<sup>th</sup> of March, 2006)

(iii) During the period when the petitioner was dismissed till her reinstatement, i.e., from 20<sup>th</sup> of March, 2006 to 31<sup>st</sup> of May, 2012, the petitioner would not get any salary as she did not perform any duty. However, the said period would be calculated for the purpose of calculation of her pension etc.

7. The learned Advocate on behalf of the petitioner refers to Rule 13 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter



referred to as the “Bihar CCA Rules” for short) to contend that Clause 1 of Rule 13 states that where the dismissal, removal or compulsory retirement of a Government Servant is set aside by a Court of Law and such Government Servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government Servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) of this Rule subject to the directions if any, of the Court.

8. Sub Rule 3 of Rule 13 states, where the dismissal, removal or compulsory retirement of a Government Servant is set aside by a Court on the merit of the case, or where the dismissal, removal or compulsory retirement of a Government Servant is set aside by a Court solely on the ground of non-compliance with the requirements of these Rules and no further inquiry is proposed to be held, the period intervening between the date of dismissal, removal or compulsory retirement as the case may be, and the date of reinstatement shall be treated as on duty for all purposes. As a result the Government Servant shall be paid full pay and allowances for the period to which he would have been entitled, had he or she not been dismissed, removed or compulsorily retired or suspended prior to such



dismissal, removal or compulsory retirement, as the case may be.

9. It is submitted by the learned Advocate for the petitioner with reference to the above provisions of Rule 13 of the Bihar CCA Rules that the Court in the judgement reported in 2011 4 PLJR 359 (HC) at Paragraph No. 31 directed the disciplinary authority to reconsider the departmental proceeding from the stage of submission of inquiry report. Therefore, the Court did not direct the departmental authority to initiate further inquiry.

10. Thus, no further inquiry was held against the petitioner in respect of the departmental proceeding initiated against her so she is entitled to get full salary for the period from 20<sup>th</sup> of March, 2006 to 31<sup>st</sup> of May, 2012 during which she was under the order of dismissal.

11. Annexure - P1 is the order passed subsequent to the decision of the Hon'ble Court reported in 2011 4 PLJR 359. After the said decision was passed, the petitioner was directed to submit her second show cause. She submitted her reply to the second show cause and she was punished with the order of censor and withholding of two increments with non-cumulative effect. The petitioner accepted the said punishment. The



petitioner also accepted the order to the effect that during the period of suspension, she is entitled to only subsistence allowance.

12. Now, the issue that comes up for adjudication in the instant writ petition is as to whether the order passed in impugned Annexure P1 in Paragraph No. 2 (iii) can be passed by the department where this Court did not direct holding of further inquiry against the petitioner.

13. In my considered opinion, the word “Inquiry” used in Rule 13 relates to disciplinary inquiry. It is not the enquiry which is held after submission of charge-sheet and written statement of defence.

14. In the previous judgement, a Coordinate Bench of this Court directed the respondent authority to reconsider the punishment awarded to the petitioner from the stage of enquiry report.

15. Thus, neither the Court nor the Rule stated that no departmental inquiry would be held against the petitioner. On the other hand, the departmental proceeding of the petitioner was sent from the stage of inquiry proceeding for reconsideration by the disciplinary proceeding.

16. Rule 13 states about reinstatement of a delinquent



employee without holding further inquiry meaning thereby disciplinary inquiry.

17. Thus, Rule 13 applies when entire disciplinary inquiry is set aside and the delinquent employee is directed to be reinstated.

18. In the instant case, the factual circumstance is totally different.

19. There is another aspect of the matter that the impugned order was passed on 13<sup>th</sup> of April, 2016. The petitioner took voluntary retirement from her service w.e.f. 16<sup>th</sup> of February, 2019. She has filed the writ petition in the year 2024. There is no explanation as to why there is such inordinate delay and laches on the part of the petitioner.

20. It is needless to say that a Constitutional Court is a Court of equity. A person is not entitled to get equitable right if he/she does not come to the Court immediately after the cause of action arose or arises.

21. For the reasons stated above, this Court is of the view that the petitioner is not entitled to get any salary during the period of her previous dismissal between 20<sup>th</sup> of March, 2006 to 31<sup>st</sup> of May, 2012. However, she is entitled to get the financial benefit in the form of ACP / Dynamic ACP on the



ground that her period of service is directed to be calculated taking into account the period of dismissal as if there was no break of service of the petitioner.

22. With the above order, the instant writ petition is disposed of.

**(Bibek Chaudhuri, J)**

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