
(2012) 11 PAT CK 0038
In the Patna High Court
Case No : CWJC No. 20649 of 2010

Md. Quamrul Hoda

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Citation : (2013) 2 PLJR 539

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Siya Ram Shahi and Md. Anisur Rahman, for the Appellant; Ajay and Pratik Sinha, for the Respondent

Final Decision : Allowed

Judgement

Ravi Ranjan, J.—Heard learned counsel for the petitioner and the State.

Petitioner who was appointed as Assistant Teacher in H.F. High School, Phenhara, P.S.-Phenhara, District-East Champaran and at the time of filing of this writ application was working as Incharge Headmaster of the School, was subjected to a disciplinary proceeding which culminated into final order of punishment dated 3.9.2003 having been passed against him, as contained in Annexure-2, whereby two punishments have been awarded. First is of "censure" and by way of second punishment a direction was given that the petitioner would not be entitled for any amount except the subsistence allowance for the period during which he had remained suspended. An appeal was also preferred by the petitioner, however, the same was dismissed by the Principal Secretary, Human Resources Development Department vide order dated 12.2.2009 as contained in Annexure-1. Learned counsel for the petitioner submits that he does not challenge the infliction of punishment of "censure", however, he challenges the other part of the impugned order by which his salary during the period of suspension has been withheld.

At the time of hearing of this writ application learned counsel raises a short

question that the order for withholding the salary for the period during which the petitioner was under suspension and allowing only subsistence allowance for that period would be illegal and in teeth of the law laid down by this court in Shri Mahabir Prasad vs. The State Bihar & Ors. [1988 PLJR 82] as in case of inflicting such punishment the petitioner was entitled to an opportunity to show cause as to why clauses (3) and (5) of Rule 97 of the Bihar Service Code should not be applied. Learned counsel for the petitioner further places reliance upon a decision rendered by Division Bench of this Court in Dinesh Prasad Vs. State of Bihar and Others, to show that the similar line has been adopted by the Division Bench also. Learned counsel for the petitioner submits that in the present case also, since no show cause was issued to explain as to why the clauses as aforesaid should not be applicable in the case of the petitioner, that itself would vitiate the concerned order.

2. A counter affidavit has been filed on behalf of the State, however, it is not stated therein that any show cause with regard to the provisions under Clauses (3) and (5) of Rule 97 of the Bihar Service Code was ever issued upon the petitioner.

3. In above view of the matter I would have no difficulty in following the line of the decisions rendered by this Court as discussed above and holding that the aforesaid lacuna on the part of the State authorities would be fatal and would vitiate the order of punishment so far it is related to withholding the salary of the petitioner during the period of suspension and allowing subsistence allowance only.

5. As a result, the order of punishment dated 3.9.2003, as contained in Annexure-2, as well as appellate order, as contained in Annexure-1, are set aside and the respondent no. 6 is directed to ensure the payment of salary of the petitioner for the period of his suspension preferably within three months from the date of receipt of this order. Accordingly, this writ application stands allowed.