

(2015) 03 PAT CK 0088
In the Patna High Court
Case No : CWJC No. 7059 of 2008

Radhe Shyam Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 PLJR 233

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Deepak Kumar Sinha, for the Appellant

Final Decision : Allowed

Judgement

Rakesh Kumar, J—Heard Sri Deepak Kumar Sinha, learned counsel for the petitioner and learned AC to AAG-6. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of an order dated 29th July, 2006 vide Memo No. 297(4) Establishment, Bhagalpur passed by the District Magistrate, Bhagalpur, whereby the petitioner has been inflicted punishment by way of (i) recording warning in the ACR, (ii) withholding of two increments with non-cumulative effect, and (iii) it has been directed that the petitioner shall not be entitled to get anything during his suspension period save and except subsistence allowance. The petitioner has further prayed for quashing the order dated 2.5.2007 passed in Bhagalpur Misc. (Service Appeal) Case No. 5/2006-07 by the Commissioner, Bhagalpur. By the said order, the Commissioner has affirmed the order of punishment passed by the District Magistrate, Bhagalpur.

2. Short fact of the case is that vide Annexure-1 to the writ petition i.e. order contained in Memo No. 653 dated 28.3.2006, the petitioner, who was Peon in Pirpainti Block, was put under suspension on the charge of dereliction of duty and disobedience to the order of the authority. The petitioner was asked to submit his explanation. Thereafter, the petitioner filed his explanation and

clarified his stand. However, subsequently by order contained in Annexure-4, the District Magistrate, Bhagalpur has inflicted punishment, as indicated above.

3. Learned counsel for the petitioner assailing the order of the District Magistrate submits that from the order itself, it is evident that without proper departmental enquiry, the punishment has been inflicted. He further submits that the order inflicting punishment does not assign any reason. The disciplinary authority i.e. the District Magistrate has not even indicated as to what was the charge against the petitioner and only punishment order has been passed. He further submits that forfeiture of salary during suspension period is a punishment, which is not prescribed as minor punishment in Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. Accordingly, it has been prayed to quash the punishment orders. He further submits that even on allegation also, the petitioner had clarified his stand that on the date he was not absent as he had gone to serve certain Government letters to the concerned office. He submits that the appellate authority, too, without considering the ground taken by the petitioner has affirmed the order of the District Magistrate and rejected the appeal.

4. Learned counsel for the State has opposed the prayer of the petitioner and he tried to persuade the Court that there was serious charge of dereliction of duty against the petitioner. Since the punishment of withholding of two increments and recording of warning in the ACR was minor punishment, there was no necessity to hold a regular departmental proceeding and only on the basis of asking show cause, punishment order was passed. Accordingly, it has been prayed to reject the prayer of the petitioner.

5. Besides hearing learned counsel for the parties, I have also perused the materials available on record. In the order, whereby the petitioner was put under suspension, no detail of charge has been mentioned save and except that on 4.3.2006, the petitioner has not affected the service of Government letters and from 2.30 P.M. on the same day he remained absent from duty. Thereafter, the petitioner filed his representation and finally, the District Magistrate vide Annexure-4 to the writ petition has inflicted the punishment on the petitioner. On perusal of Annexure-4 i.e. punishment order, it is evident that nothing has been indicated as to what was the exact charge against the petitioner. So far as recording warning in the ACR of the petitioner and withholding of two increments are concerned, those are not major punishment, for which a regular departmental enquiry was not necessary. The fact remains that 3rd punishment for forfeiture of salary during the suspension period, same has not been included in minor punishment as per Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. Since this punishment has been imposed, which has not been incorporated in the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 Rules, without regular departmental enquiry, the Court is of the opinion that the District Magistrate was not justified to pass order for forfeiting the salary during the suspension period.

Accordingly, the order dated 29th July, 2006 (Annexure-1 to the writ petition is hereby set aside. Since order dated 29th July, 2006 is quashed and consequential order dated 2.5.2007 of the appellate authority is also set aside.

The writ petition stands allowed.