

(1975) 07 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 451 of 1972

Shri Mahabir Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-07-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) PLJR 82

Hon'ble Judges : S.N.P. Singh, C.J.;S.K. Jha, J

Bench : Division Bench

Advocate : Tarkeshwar Dayal and Man Mohan, for the Appellant;

Judgement

S.N.P. Singh, C.J.—This writ application under Article 226 of the Constitution of India has been filed by Shri Mahabir Prasad, who was working as Prakhand Vikash Padadhikari at Kurban in the district of Muzaffarpur, when the application was filed. We are informed that he has since retired from the service. In this writ application the petitioner has challenged the validity of the order dated 23rd of June 1970 contained in Annexure 1, by which certain punishment has been inflicted upon him. The relevant facts for the disposal of this application may be stated as follows. The petitioner was initially appointed as an Agricultural Overseer in the year 1937 in the Government of Bihar. He was promoted to the next higher rank of Superintendent in class II of the Bihar Agriculture Service on 16th of August 1963. In the year 1964 while the petitioner was posted as Superintendent of Agriculture School at Pusa he was placed under suspension by order of the State Government dated 1st of December 1967. He was treated to be under suspension with effect from 3rd of January 1968. A Departmental proceeding was started against him in respect of thirteen charges. Shri Ehsan Ahmad (respondent No. 2) who was then posted as Deputy Secretary to the Government in the Department of Agriculture, conducted, the enquiry. The enquiry was concluded on 5th of December 1969. The State of Bihar, after considering the report of the enquiring officer, did not inflict any major

punishment on the petitioner. By the impugned order (Annexure 1) the State Government censured the petitioner and directed an entry to be recorded in his C.R. The State Government further passed an order to the effect that the period of suspension be treated as on duty for the purposes of pension and gratuity, but the petitioner would not get anything more beyond the subsistence allowance already received by him during the period of suspension. By the said order suspension of the petitioner was vacated from the date of the order.

2. Mr. Tarkeshwar Dayal, learned Counsel appealing for the petitioner did not challenge the validity of the order of censure. Learned counsel however, submitted that the order of the State Government that the period of suspension would be treated as on duty for the purposes of pension and gratuity but the petitioner would not get anything more than the subsistence allowance already received by him during the period of suspension is, invalid, because the petitioner was not given an opportunity to be heard before the said order was passed. In support of this contention, learned counsel relied upon a decision of the Supreme Court in *M. Gopala Krishna Naidu Vs. State of Madhya Pradesh*, . There is substance in the contention of learned counsel. The facts of the Supreme Court case were, more or less, similar in the sense that the delinquent officer had been suspended pending the Departmental enquiry. The enquiring officer found the officer not guilty, but the Government disagreed with that finding and served a notice to show cause why he should not be dismissed. Subsequently, the Government held that the charges against the officer were not proved beyond reasonable doubt. It also held that the suspension and the Departmental enquiry "were not wholly unjustified". The order further directed, inter alia, that the entire period of absence from duty should be treated as period spent on duty under Fundamental Rule 54(5) for purposes of pension only, but that he should not be allowed any pay beyond what he had actually received or what was allowed to him by way of subsistence allowance during the period of his suspension. The Supreme Court held that Fundamental Rule 54 contemplates a duty to act in accordance with the basic concept of justice and fairplay. The authority has to afford a reasonable opportunity to the officer concerned to show cause why clauses (3) and (5) should not be applied. In that case the order was held to be invalid as no reasonable opportunity to the officer to show cause was given. Rule 97 of the Bihar Service Code, 1952, is in pari materia with rule 54 of the Fundamental Rules. The petitioner, therefore, ought to have been given an opportunity to show cause why clauses (3) and (5) of Rule 97 should not be applied in his case. As that had not been done, the application is allowed and the impugned portion of the order contained in Annexure 1 which reads "The period of suspension be treated as on duty for the purposes of pension and gratuity but he will not get anything more beyond the subsistence grant already received by him during the period of suspension" is struck down as invalid. It would be open to the competent authority to consider the question de novo, after giving the petitioner a reasonable opportunity to show cause against the action proposed against him. There will be no order as to costs.

S.K. Jha, J.

I agree.