

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8639 of 1999

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Bishwanath Prasad Yadav son of Late Ramjanam Rai resident of village Beur, P.O. Hussanabad, District Balia, at present residing at Mundrika Ram Janta Road, Amrudi Bagicha, P.S. Gardanibagh, P.O. G.P.O. District Patna.

.... Petitioner/s

Versus

1.The Managing Director, Bihar State Tourism Development Corporation, Patna.
2.The Inquiry Officer, Bihar State Tourism Development Corporation, Patna.

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

6 11-08-2015

Heard learned counsel for the parties.

2. The petitioner in this writ application has

prayed for the following relief:-

“That this writ application is being filed for issuance of writ of mandamus directing the Respondents to re-instate the petitioner in service from which he was dismissed by order contained in Memo No. 840/95 communicated by letter No. 17 dated 29.08.1995 and also for issuance of a writ of certiorari quashing the order dated 29.08.1995 which was disproved and held contrary to the principles of natural justice by this Hon’ble Court in its order dated 17.04.1997 passed in C.W.J.C No. 4989 of 1996. The petitioner further prays for issuance of any other writ/writs, order/orders and/or direction for which the petitioner may be found entitled.”

3. As would be evident, the petitioner being a

driver in the Bihar State Tourism Development

Corporation (hereinafter referred to as the Corporation)

was subjected to a very serious charge of not only



unauthorisedly occupying the room of the hotel being run by the Corporation but also intruding into the privacy of a guest occupying adjacent room. As a matter of fact, the order of his punishment of removal from service dated 29.08.1995 was made subject matter of earlier writ application filed by him being C.W.J.C No. 4989 of 1996 and the order of this Court dated 17.04.1997, would itself speak volume of the nature of misconduct allegedly committed by the petitioner. To that extent, it would be relevant to extract the order of this Court dated 17.04.1997 passed in C.W.J.C No. 4949 of 1996 which reads as follows:-

“As stated above, the Staff Regulation does not provide for any specific procedure. It also does not provide that on receipt of complaint a regular proceeding as contemplated by Rule 55 of the Civil Services (Classification, Control & Appeal) Rules, 1930 or the corresponding rules of Bihar Subordinate Services (Discipline and Appeal) Rules, 1935, which are applicable to Government servants, should be initiated. Nevertheless, the procedure adopted in the instant case to hold the petitioner guilty appears to be short of requirement of rules of natural justice. The petitioner should have been given a chance to cross-examine the witnesses. Non-examination of the complainant appears to be vital omission. I am, therefore, of the opinion that the matter requires fresh consideration.

The Managing Director, Bihar State Tourism Development Corporation is, accordingly, directed to consider the matter afresh and take an appropriate decision in accordance with law. While considering the matter, he will

take into account both the complaint of Sri Subodh Kumar Tiwary as well as the admitted fact that the petitioner in sleeping in the hotel room during duty hours, which prima facie also amounts to misconduct. He shall also examine the conduct of the Receptionist in allowing the petitioner to use the hotel room.

The petitioner is out of job since August 1995 i.e. for more than one and a half years. An appropriate decision should, therefore, be taken with a reasonable time, say, four months on receipt/production of a copy of this order.

This writ petition stands disposed of accordingly.”

4. From the aforementioned order it would be clear that this Court held three things:-

(a) Firstly, the petitioner was facing very serious allegation.

(b) Secondly, the Corporation had not prescribed service regulations of holding departmental enquiry and examining the witnesses.

(c) And thirdly, that the petitioner's plea of violation of the principles of natural justice was to be examined afresh by the Managing Director of the Corporation.

5. It is not in doubt that after the aforementioned order of this Court, the detailed inquiry was conducted in which the charge against the petitioner either in



respect of occupying the room or intruding into the privacy of the guest was proved. The explanation of the petitioner that he was entitled to occupy the room of the hotel on account of his working in the night shift, was found to be wholly incorrect because the Manager, Transport, had come out to say that the drivers working in the night shift were to be given accommodation in the dormitory and not in the rooms. Yet again the fact that the petitioner having forcibly taken occupation of room no. 206 was found to be correct because he had taken keys from Pawan Kumar Singh, the receptionist of the hotel. In the inquiry report it was also found that the petitioner along with Prem Bahadur Thapa while occupying room no. 206 had intruded into the privacy of the guest namely, Subodh Kumar, who was occupying the room no. 205. The fact that a hole was found in the wall connecting the two rooms being an established fact, it was not difficult for the inquiry officer to also come to the conclusion that the room

which was meant for newly wedded couple (room no. 205), its privacy was sought to be intruded by the petitioner and Prem Bahadur Thapa.

6. Thus, an inquiry was conducted in presence of the petitioner in terms of the order of this Court dated 17.04.1997, whereafter the impugned order of dismissal from services of the Corporation was reaffirmed. As noted above, there is no prescribed statutory rule for the employees of the Corporation and therefore, when the principles of natural justice were also followed in terms of the order of this Court dated 17.04.1997, by holding a fresh inquiry, this Court will not be impressed only with the last part of the inquiry report where the inquiry officer had made a recommendation for inflicting lenient punishment to the petitioner in respect of his dismissal from service. It was none of the job of the inquiry officer to intrude into the field/jurisdiction of the disciplinary authority. Awarding punishment or its quantum, is the prerogative of the disciplinary



authority. The role of inquiry officer was only to examine the charges and once those charges against the petitioner had stood proved, the Corporation was not required to retain such employee, whose misconduct was directly affecting the reputation of the hotel of the Corporation. To that extent, this Court would find that the stand of the Corporation in paragraph nos. 13 and 16 are factually correct and legally sustainable, wherein, it has been stated as follows:-

“That with regard to statement made in paragraph 18 it is stated that tourism sector is a very sensitive and susceptible to reputation and image. Such a deplorable incidence has definitely cause irreparable damage to the organization and therefore has rightly attracted severest of punishment to effectively deter re-occurrence of any such incidence in future.

That with regard to statement made in paragraph 25 it is pertinent to mention that the respondents have followed the direction of this Hon’ble Court and accordingly conducted a fresh enquiry without being prejudicial, arbitrary or discriminatory and the dismissal of the petitioner justified. It may also be mentioned that the ushering industry cannot afford to keep workers of such low moral character, which might even prove fatal to the reputation of the Corporation, which is the foundation stone on which the ushering sector stands.”

7. This Court in fact also finds that the petitioner in his representation had almost admitted the misconduct committed by him, inasmuch as, he had

accepted to have occupied the room no. 206 but that room was never meant to be occupied by the drivers for whom in the night shift accommodation made was to stay in the dormitory.

8. In that view of the matter, the impugned order dated 29.09.1994 as contained in Annexure-A giving categorical reasons for removing the petitioner from service, does not suffer from any error.

9. That being so, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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