

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7356 of 2014

Om Prakash Suman Son of Sri Yamuna Prasad Resident of Village - Kuar Bathua,
P.O. - Bathua Bazar, P.S. - Fulwariya, District - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Urban Development and Housing , Government of Bihar, Patna.
2. The Deputy Secretary, Department of Urban Development and Housing, Government of Bihar, Patna.
3. The Additional Secretary, Department of Urban Development and Housing Government of Bihar, Patna.
4. The Enquiry Officer cum Additional Secretary, Department of Urban Development and Housing, Government of Bihar, Patna.
5. The Secretary, Vigilance Investigation Bureau.
6. The District Magistrate, Siwan
7. The Executive Officer, Nagar Parishad, Siwan.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 7253 of 2014

Prem Kumar Gupta Son of Late Badri Prasad Resident of Mohalla- Makhdum Sarai, P.S- Town Siwan, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna
3. The Deputy Secretary, Urban Development and Housing Department, Govt. of Bihar.
4. The Under Secretary, Urban Development and Housing Department- Cum- Enquiry Officer.
5. Siwan Nagar Parishad, Siwan, through its Executive Officer
6. The District Magistrate, Siwan.

.... Respondent/s

Appearance :

(In CWJC No. 7356 of 2014)

For the Petitioner/s : Mr. Ranjeet Kumar, Adv.

For the Resp. 1 to 3 : Mr. Asit Kumar Jha, AC to GP-6

For the Resp. No.7 : Mr. Ravi Bhushan Verma, Adv.

(In CWJC No. 7253 of 2014)

For the Petitioner/s : Mr. Gajanan Arun, Adv.

For the State : Mr. M.D. Singh, AC to GA-10

For the R. No.5 : Mr. Ravi Bhushan Verma, Adv.

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
Date: 10-03-2015

In both the writ applications, the prayer of both the petitioners is one and same, namely, they want their respective Memo of Charge to be quashed. To that extent, it would be relevant to quote the prayer of both the writ applications, which reads as follows:-

CWJC No. 7356 of 2014

- "1(I) *For setting aside the Prapatra Ka as contained in Memo No. 30 dated 04.01.2014 and supplementary Prapatra Ka as contained in Memo No. 407 dated 12.02.2014 both issued by the Executive Officer, Nagar Parishad, Siwan, as name is contrary to and against the ambit and scope of the order No. 210 dated 11.12.2013 issued by the Deputy Secretary, Department of Urban Development and Housing, Government of Bihar, Patna (Respondent No.2), whereby the departmental proceeding has been initiated against the petitioner.*
- (II) *For a further direction to the respondents authorities to change the presenting officer as ordered in Memo No. 2994 dated 11.12.2013 issued by the Deputy Secretary, Department of Urban Development and Housing, Government of Bihar, Patna (Respondent No.2), whereby departmental proceeding has been initiated against the petitioner, as the presenting officer himself is involved in the illegality for which departmental proceeding has been initiated and he is taking all sort of illegal action and further he has enlarged the scope of the departmental proceeding by adding stale and frivolous charges against the petitioner due to personal grudge and vengeance."*

CWJC No. 7253 of 2014

- "1. *That this Petition is for quashing the Letter No. 2564*

dated 3.8.2013 whereby and whereunder charges have been framed against the petitioner and comments have been asked from the Executive Officer, Nagar Parishad, Siwan (Annexure-4)."

2. Learned counsel for the petitioners, in both the cases, have sought to assail the correctness of the allegations included in the Memo of Charge by taking a plea that the petitioner Om Prakash Suman being a Junior Engineer, he could not have been held to be guilty for the misconduct allegedly committed by the then Executive Officer or the Head Clerk, Prem Kumar Gupta, the petitioner in the second case. He has also tried to assail the correctness of the Memo of Charge on the ground that it was drawn by a person who was himself is facing similar allegation.

3. On the other hand, learned counsel for the petitioner Prem Kumar Gupta has submitted that the aforesaid petitioner has already retired from service of the Nagar Parishad and, therefore, he could not be subjected to departmental proceeding on account of the severance of relationship of employer and employee.

4. Learned counsel for the respondents have filed their counter affidavit and, as such, he has justified the Memo of Charge by explaining that earlier a fact finding enquiry was conducted and after this allegation was found to be serious, a departmental proceeding has been initiated not only against the two petitioners but others as well and at present is being conducted by Additional Secretary of the



Urban Development Department of the Government of Bihar. He has also submitted that an enquiry is already in the midway and, therefore, whatever defence that the petitioners may have against the Memo of Charge, they can very well raise it before the concerned enquiry officer.

5. Quashing of Memo of Charge is one of the rare of the rarest thing in the service jurisprudence. Normally, Memo of Charge cannot be interfered by way of judicial review for a simple reason that they are only in shape of allegation for which an enquiry has to be held. The exception to the said rule can be only in the event that a Memo of Charge or part thereof had been subject matter of earlier enquiry leading to either exoneration or punishment because in such event, no second enquiry can be held for the same charge.

6. As with regard to authority drawing Memo of Charge, the law is well settled that any authority, superior to the person concerned having the day-to-day control over the employee, can also frame Memo of Charge and it is not necessary that only appointing authority has to draw the Memo of Charge. Admittedly, both the petitioners holding the post of Junior Engineer or the Head Clerk were answering to the Executive Officer of the Nagar Parishad and, therefore, this Court also does not find any error in the drawing of Memo of Charge by the Executive Officer. It would be a different thing that if the petitioners find any prejudice or bias involved in the

Memo of Charge, in that case, they can always not only take such plea in the written statement of defence but also may lead evidence for showing the bias/prejudice of the officer concerned but, then, on that ground also, the departmental proceeding cannot be nipped in bud.

7. The normal rule, therefore, in case of departmental proceeding commencing only with the framing of charge and service of the Memo of Charge is that the delinquent has to file his written statement of defence either accepting or denying the charges and in case such charges are denied, a regular departmental proceeding has to be held wherein the evidence both oral and/or documentary evidences have to be adduced by both the parties. Thereafter, the enquiry officer submits his report and copy of the report would be given to the delinquent and at that stage, the delinquent will have another opportunity to give his comment/reaction to the findings arrived at by the enquiry officer. All these in fact emanates from the stage of framing of Memo of Charge and, therefore, the Memo of Charge cannot be held to be bad on the ground that some of the allegations were correct or otherwise. The veracity of those allegations included in the Memo of Charge has to be in fact gone into in the departmental proceeding. The petitioners, therefore, in all fairness, ought to have not filed these frivolous writ applications because admittedly they are also facing departmental proceeding and appearing before the enquiry officer.

8. The only denial on behalf of the petitioner Prem Kumar Gupta that he has already retired from service will also have no impact in law because once it is admitted by him that he is governed by the provision of Bihar Pension Rules for the purpose of getting pension, he would be also liable for being proceeded under Rule 43B of the Bihar Pension Rule which provides for either continuing a proceeding initiated during his tenure of an employee or even drawing a fresh proceeding after retirement, subject to the conditions imposed under Rule 43B. The petitioner Prem Kumar Gupta, therefore, who had continued in service till 2011, could be very well subjected to a departmental proceeding by way of Memo of Charge drawn against him on 3.8.2013.

9. Thus, for all the reasons indicated above, this Court would find no merit in either of the writ applications and they are, accordingly, dismissed with an observation and liberty that since the departmental enquiry is well continuing against the petitioners, the petitioners may raise any issue in their defence before the enquiry officer and if that be so, they will not be prejudiced by any thing said in this order.

(Mihir Kumar Jha, J)

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