

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13749 of 2008

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Gautam Rai, s/o Late Banarshi Rai, resident of village Senduri, P.S. baniapur,
District Saran at present posted in Motihari district Tub Well, Motihari Division
Motihari

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, patna
2. Secretary of Bihar Government Ministry of Water Resources Developement
(Irrigation) Department, patna
3. Additional Secretary of Bihar Government Ministry of Water Resources
Development (Irrigation) Department Patna
4. Joint Secretary of Bihar Government Ministry of Water Resources
Development (Irrigation) Department Patna
5. Superintendent Engineer, Tube well, Patna Division
6. Executive Engineer, irrigation, Patna Division
7. Executive Engineer, Tube well Motihari Division
8. Executive Engineer Tube well, Muzaffarpur division

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sajay Kumar @ S.K.

For the Respondent/s : AC to SC No. 8

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 15-09-2015

Heard learned counsel for the petitioner and learned AC to
SC No. 8.

The petitioner, invoking writ jurisdiction of this Court
under Article 226 of the Constitution of India, has prayed for
quashing of an Order contained in Memo No. 4091 Dated 28.9.2005.
By the said order after conclusion of Departmental enquiry on serious



charges, pertaining to serious misconduct and misappropriation of Government Fund, the petitioner was imposed *censure* and order for recovery of Rs. 1,83,780/- was passed, besides some other punishment. From the order impugned it is evident that the petitioner was also made an accused for misappropriation of Government fund. The petitioner, at the relevant time was working as “Accountant” in Nalkup Pramandal, Motihari.

Learned counsel for the petitioner accepts that criminal prosecution is still pending against the petitioner. He has relied on an Order Dated 11.7.2007 passed in CWJC No. 15709 of 2005 and submits that the petitioner of the said case was also made an accused along with the petitioner and others in Mohammadpur P.S. Case No. 232 of 1994. He was also awarded almost similar punishment but this Court had quashed the punishment order vide Annexure – “6” to the writ petition i.e. Order Dated 11.7.2007. Accordingly, a prayer has been made that the petitioner may be granted same relief.

Learned counsel for the State submits that the petitioner was charged for serious misconduct relating to misappropriation of public fund while acting as Accountant. The petitioner was made accused along with others. In the departmental proceeding no irregularity was committed, rather after receipt of enquiry report, second show cause notice was issued, and only thereafter,



punishment order was passed. He submits that while exercising power of judicial review this Court is only required to examine as to whether in the departmental enquiry any irregularity was committed or not. This Court may not examine the proceeding on its merit. Distinguishing the case of the petitioner, with the case of Jagdish Giri in whose favour order was passed in CWJC No. 15709 of 2005 (Annexure - "6"), he submits that he was posted as Guard, and moreover, punishment order was passed after his retirement, and as such, the case of the petitioner may not be equated with the case of Jagdish Giri.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. It appears that by inflicting order as contained in Annexure - "1" the Department has taken very lenient view in the matter. Moreover, on perusal of the order impugned the Court is satisfied that no illegality or irregularity has been committed while taking decision in the Departmental proceeding. So far case of Sri Jagdish Giri is concerned, obviously, it has not been disputed that Sri Giri was posted as Guard, not like the petitioner who was posted as Accountant. Moreover, in respect of Sri Giri order of punishment was passed after his retirement and thereafter this Court had quashed the order. The petitioner's case is not identical to the case of Sri Giri. I do not find any ground to pass

any favourable order.

The writ petition stands dismissed.

(Rakesh Kumar, J)

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