

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1581 of 2013

IN

Civil Writ Jurisdiction Case No. 4492 of 2008

With

Interlocutory Application No. 3306 of 2014

In

Letters Patent Appeal No.1581 of 2013

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1. The Chairman, Bihar Rajya Jal Parishad, Rajapur, Patna
 2. The Managing Director, Bihar Rajya Jal Parishad Rajapur, Patna
 3. The Secretary, Bihar Rajya Jal Parishad Rajapur, Patna
 4. The Executive Engineer Cum Conducting Officer, Bihar Rajya Jal Parishad
Ganga Pariyojna Division No. 1, STP Saidpur, Patna- 4

.... Appellants

Versus

1. Ganesh Chandra Prasad Son of Late Rameshwar Prasad, Resident of House No.
92, Indira Nagar, West of Rajapur, P.S. Patliputra, District Patna

... Respondent 1st set

2. The Commissioner Cum Secretary, Public Health and Engineering Department,
Government of Bihar, Patna

3. The State of Bihar Respondents 2nd set

Respondents

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Appearance :

For the Appellant/s : Mr. Rai Shivaji Nath, Sr. Advocate
Mr. Indrajeet Singh

For the Respondent 1st set : Mr. S B K Mangalam
Mrs. Anita Kumari

For the State : Mr. Mahboob Ashraf, AC to SC 27

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 13-01-2015

The respondents 3 to 6 in CWJC No. 4492 of 2008 are
the appellants. They feel aggrieved by the judgment and order dated

30.8.2012 rendered by the learned Single Judge therein.

The 1st respondent (for short, respondent) herein was appointed as Driver by the appellant in the year 1981. The appellant issued charge-sheet dated 26.2.2005, wherein thirteen charges, mainly of insubordination, were framed against the respondent. The respondent submitted explanation denying the charges. The appellants conducted the departmental enquiry. The enquiry officer submitted a report holding that, out of thirteen charges, only charge nos.3, 4, 7 and 8 are proved and rest are not proved. Taking the report of the enquiry officer into account, the disciplinary authority issued second show cause notice dated 24.5.2005 proposing the punishment of dismissal from service. The respondent submitted his explanation dated 28.5.2005. On consideration of the same, the disciplinary authority passed the order dated 25.7.2005 dismissing the respondent from service.

The respondent filed an appeal before the appellate authority and the same was dismissed. Challenging the order of dismissal which was upheld in the appeal, the respondent filed CWJC No. 11989 of 2006. The writ petition was disposed of setting aside the order passed by the appellate authority on the ground that it was bereft of reasons and the matter was remanded. On such remand, the appellate authority passed a fresh order dated 15.2.2008 once again rejecting the appeal. Thereafter the present writ petition, being CWJC No. 4492 of 2008 was filed.

The respondent raised several contentions. It is pleaded that the departmental enquiry was not conducted properly, the report of the enquiry officer was not furnished, and the disciplinary authority and the appellate authority did not take into account, the various aspects raised in reply to the second show cause. The appellants

contested the writ petition by filing counter affidavit. The learned Single Judge allowed the writ petition, setting aside the order of dismissal and extending all consequential benefits to the petitioner. Hence this appeal.

Sri Rai Shivaji Nath, learned senior counsel for the appellants submits that the learned Single Judge did not record any finding at all to the effect that the charges are not proved and simply by making general observations, the writ petition was allowed. He contends that the respondent did not make any grievance as to the non-furnishing of the report of the enquiry officer and the learned Single Judge also did not record any finding to the effect that any prejudice as such was caused to the petitioner on that account. Learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Managing Director, ECIL v. B Karunakar* [AIR 1994 SC 1074 = (1993) 4 SCC 727]. He urged certain other grounds also.

Mr. S B K Mangalam, learned counsel for the respondent, on the other hand, submits that the prejudice exhibited by the appellant was so acute that even the matters pertaining to the year 1986 was raked up in the enquiry that was held in 2005. He further submits that only the principal allegation against the respondent was that he threatened to commit suicide if he is not transferred back from Bhagalpur to Patna and that was taken as a serious matter, leading to his dismissal from service. He too advanced various other contentions.

Though the substantive appointment of the respondent as an Attendant, he was entrusted with the duties of driving the vehicle. He did not have any qualms about it. The occasion for the appellants to initiate the departmental proceeding against the respondent arose on account of his failure to vacate the quarter at



Patna though he was transferred to Bhagalpur. As a sequel to that very episode, the respondent is said to have created a scene in the office stating that if he is not retransferred to Patna he would commit suicide. Beyond that, there was no serious insubordination or any other act of misconduct. He has further submitted that obviously to supplement the other allegations the appellants took recourse which are more than decades' old. As regards the report of the enquiry officer, it is evident that no presenting officer was appointed and everything was done by the conducting officer himself and that most of the charges are not proved.

The disciplinary authority passed the order dismissing the respondent from service. The same was upheld by the appellate authority. Though the petitioner approached this Court earlier through a writ petition and the same was allowed remanding the matter to the appellate authority it has got no much of relevance.

It is true that the learned Single Judge was mainly impressed by the fact that the report of the enquiry officer was not furnished and that no finding was recorded to the effect that the charges on the basis of the report of the enquiry officer were based on evidence. However, it is fairly well settled that mere failure to furnish the report of the enquiry officer, by itself does not vitiate the disciplinary proceedings. It is only when the employee proves the prejudice on account of non-furnishing such report, that the Court may consider the feasibility of setting aside part of the proceedings, leaving it open to the employer to furnish report and then to continue the matter from that stage. Reference in this context may be made to the Judgment in Karunakar's case cited above.

In the instant case, the respondent also did not make any grievance in his reply to the second show cause notice, in relation



to the failure to furnish the enquiry report. The ground upon which the learned Single Judge allowed the writ petition which cannot be sustained in law. This, however, does not put an end to the matter. Either we have to remand the matter to the learned Single Judge for fresh hearing, or leave it open to the appellants to furnish the copy of the enquiry report and then to proceed with the matter, provided the respondent has proved prejudice. The third option is to consider the merits of the case by ourselves. We choose the last option.

It has also been mentioned that the only serious charge against the respondent was that he created a scene, threatening to commit suicide in case he is not retransferred to Patna from Bhagalpur. Being a low-paid employee, obviously he was finding it difficult to maintain his family at Patna on the one hand, and to work at Bhagalpur on the other hand. Maybe, on sheer desperation he was threatening to commit suicide; to impress the authorities. Of course,, such acts cannot be supported. However, that cannot result in imposition of the extreme penalty of dismissal from service. At a time, when the highly placed officials are not vacating the palatial bungalows despite the orders of the Court, a poor employee like the respondent cannot be blamed and be punished with dismissal from service for not vacating a small quarter, even after his transfer.

On merits also we find that though as many as 13 charges were framed, only 4 were held proved. We are of the view that denial of 50% of back wages would meet the ends of justice and can work as deterrent for the respondent to be disciplined henceforth.

We, therefore, dispose of this Letters Patent Appeal by modifying the order dated 30.8.2012 passed by the learned Single Judge in CWJC No. 4492 of 2008 to the effect that order of dismissal dated 25.7.2005 is set aside but the respondent shall be entitled to be

paid the back wages only to the extent of 50% and a warning is administered to him to be careful henceforth.

The appellants shall reinstate the respondent within four weeks from today with payment of back wages as directed above.

The Appeal stands disposed of accordingly.

Interlocutory Application, if any, shall stand disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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