

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5410 of 2014

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Dineshwar Prasad son of Late Rambriksh Singh, resident of village-Banauta, Police Station-Parsa, District-Saran, Panchayat Secretary, Gram Panchayat Rajpir Maker, Block Maker, District-Saran

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Commissioner, Saran Division, Chapra
3. The Collector, Saran
4. The District Transport Office, Saran, Chapra cum Enquiry Officer
5. The Block Development Officer, Maker cum Presenting Officer

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. SANJAY KUMAR VERMA, Advocate

For the Respondent/s : Mr. Kumar Pankaj, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-09-2016

Heard Mr. Sanjay Kumar Verma, learned counsel for the
petitioner and Mr. Kumar Pankaj, A.C. to SC-5 for the State.

A rather peculiar situation has given rise to the contest in question. The petitioner is a Panchayat Secretary, Gram Panchayat Raj Maker in the District of Saran and he was allegedly caught red handed while taking a bribe of Rs. 2,000/- on 11.6.2009 by the team of the Vigilance Investigation Bureau. This led to institution of Vigilance Case No. 68 of 2009 registered for offences punishable under the Prevention of Corruption Act, 1988. The matter remains pending before the Special Court for adjudication. Insofar as the departmental action is concerned, the petitioner was initially put under suspension vide office order bearing Memo No. 1007 dated



16.7.2009. For the reasons left at the discretion of the District Magistrate, Saran, he chose to revoke the suspension and accepted the joining of the petitioner vide order bearing Memo No. 196 dated 18.11.2000 placed at Annexure-1. There being no change in circumstance nor there being any apparent reason on record of the proceeding, the District Magistrate, Saran at Chapra vide his order bearing Memo No. 85 dated 29.1.2014 merely taking note of the pending criminal proceeding initiated against the petitioner has again put him under suspension in exercise of powers vested under Rule 9(1)(a) (c) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules') as amended from time to time. By the same order the District Magistrate, Saran at Chapra has appointed the District Transport Officer, Saran as the Enquiry Officer. The petitioner being aggrieved by the suspension order preferred service appeal before the Commissioner, Saran Division on 26.2.2014 which has remained pending and feeling aggrieved petitioner is before this Court.

Mr. Verma, learned counsel for the petitioner with reference to the statement made at paragraph-15 informs that although the appeal was filed before the Commissioner, Saran Division but was not entertained in reference to a decision of the State Government of awaiting final decision in the Vigilance Case.

This matter was heard on 19.8.2016 and learned counsel



for the State was directed to inform the current status of the matter and when a supplementary affidavit has been filed in which it is stated at paragraph-6 that the District Transport Officer cum Enquiry Officer on completion of the enquiry has held the petitioner guilty and recommended for appropriate punishment under the Rules. A copy of the enquiry report dated 28.3.2014 is enclosed at Annexure-G to the supplementary counter affidavit. It is further stated that the District Magistrate issued a second show cause to the petitioner on 28.4.2014 present at Annexure-H. The petitioner submitted his reply and whereafter the District Magistrate, Saran vide letter bearing No. 18.9.2014 has directed for fresh enquiry into the matter by the Additional Collector. In my opinion, this action of the District Magistrate as reflected from his letter no. 609 dated 18.9.2015 present at Annexure-I is illegal and contrary to 'the Rules'. The procedure to be followed by a disciplinary authority upon submission of enquiry report stands discussed in Rule 18 of 'the Rules' and even if sub-rule (2) thereof enables the disciplinary authority to disagree with the finding of the Enquiry Officer and for its remittance for further enquiry or to record his reason for disagreement with opportunity to the delinquent to respond thereto under sub rule (3) but there is nothing in Rule 18 which vests any jurisdiction on the disciplinary authority for directing fresh enquiry. There may be exceptional circumstances for such exercise but in my opinion, considering that



the Enquiry Officer has reported against the petitioner, even if there are reasons for the disciplinary authority not to agree with the opinion of the Enquiry Officer, yet he is not vested with any jurisdiction to go for a second round enquiry after having acted on the enquiry report to seek a show cause from the petitioner vide his letter dated 24.5.2014. In fact the District Magistrate, Saran having taken steps in furtherance of the procedure provided under Rule 18 (3), the only formality which now requires to be completed under Rule 18(4) is to pass a final order thereon.

It is stated by Mr. Sanjay Kumar Verma learned counsel for the petitioner that the situation is even worse here for in the present case even the report of the Additional Collector, submitted vide his letter dated 22.6.2015 present at Annexure-J, yet did not satisfy the District Magistrate and he vide letter dated 16.8.2016 has again made certain queries to the Additional Collector.

In my opinion, the entire exercise initiated by the District Magistrate, Saran beginning from his letter dated 18.9.2014 in requiring a second round enquiry by the Additional Collector together with the third round query vide letter dated 16.8.2016 is per se illegal and contrary to the statutory prescription. The rules in question do not vest the District Magistrate to indulge in repeated enquiries merely because it is not to his satisfaction. It is rather unfortunate that a person of the stature of the District Magistrate has not bothered

to satisfy himself on the statutory rules and whether he is vested with any such jurisdiction to carry out such adventurism.

Having observed as such and considering the sequence of events where the enquiry stands completed by the submission of the report by the District Transport Officer and upon which the District Magistrate has also sought a reply from the petitioner vide letter dated 24.5.2014, all that this Court for the present would do is to direct the District Magistrate, Saran to conclude the proceedings by passing final order within a maximum period of four weeks from the date of receipt / production of a copy of this order without taking note of the subsequent enquiry held by the Additional Collector.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

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