

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6982 of 1997

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1. Kamleshwar Pd. Verma son of late Hari Lal Verma, residing in Raj Bhawan Campus, Patna
 2. Md. Hasib son of late Mohammad Sahdul Mian, residing at peons Qr. No.98, Raj Bhawan, Patna
 3. Ram Chandra Ram son of late Bhola Ram, residing in peon quarter No.3, Raj Bhawan, Patna
 4. Rajendra Mahto son of Sri Khedu Mahto, residing Raj Bhawan Campus, Raj Bhawan, Patna
 5. (1) Bimla Devi wife of late Shyam Mandal
(2) Rajesh Mandal son of late Shyam Mandal, both are residing at village Sakhua, P.S. Sanhaura, District-Bhagalpur
 6. Sant Lal Mandal son of Sri Dasrath Mandal, residing in peons Quarter No.31, Raj Bhawan, Patna.
 7. Shiv Narayan Paswan son of late Bhageran Paswan, residing in Peons Qr. No.53, Raj Bhawan, Patna
 8. Vakil Pandit son of late Bindeshwari Pandit, residing in Peons' Qr.No.65, Raj Bhawan, Patna'
 9. Chandar Mandal son of late Mahabir Mandal, residing in peons Qr. No.46, Raj Bhawan, Patna
 10. (1) Moti Hansda son of late Chunnu, resident of village Dharauadih, P.O. Gharals, P.S. Jasidih, Distt. Deoghar, in the State of Jharkhand

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Commissioner and Secretary, Cabinet Secretariat & Co-ordination deptt. Government of Bihar, Patna
3. The Secretary and Commissioner to the Governor, Governors' Secretariat, Raj Bhawan, Patna
4. The Principal Secretary to Governor, Governors' Secretariat, Raj Bhawan, Patna
5. The Enquiry Officer-cum-O.S.D. to Governor, Governors' Secretariat, Raj Bhawan, Patna

.... Respondent/s

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Appearance :

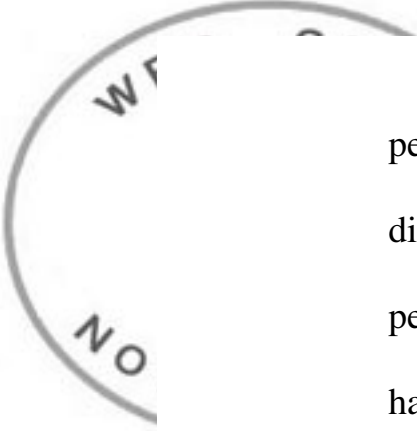
For the Petitioner/s : Mr. Gyanand Roy, Adv.
Mr. Shanti Pratap, Adv.

For the Respondent Nos.1 and 2 : Mr. Ashutosh Ranjan Pandey, AAG 15
Mr. Rakesh Narayan Singh, A.C. to AAG 15
Mr. Vijay Kumar Mishra, A.C. to AAG 15

For the Respondent Nos. 3 to 5: Mr. Rajendra Kumar Giri, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
C.A.V. JUDGMENT
Date: 09-09-2016



Originally this writ petition was filed on behalf of the 10 petitioners who were in the service of the Raj Bhawan and had been dismissed on charges of misconduct. During the pendency of the writ petition two of them i.e. petitioner Nos. 5 and 10 have deceased and have been substituted by their legal heirs, who are pursuing the matter.

The petitioners are aggrieved by orders bearing Memo no. 456 to 465, all dated 8.3.1996 issued under the signature of the Principal Secretary, Governor of Bihar whereby the writ petitioners have been dismissed from the service, copies of the orders are impugned at Annexure-1 series to the writ petition. The petitioners were posted on different Class-IV posts of Udyan Mazdoor, Peon and Daftari. The details are present at paragraph 25 of the writ petition.

Facts leading to the impugned order briefly stated is, that a general strike of non-gazetted employees took place on 19.11.1991 and continued until 4.2.1992 on an agreement being reached in between the State Government and the Non-gazetted Employees Federation. Certain modalities were worked upon and which would be relevant for the present purpose. A decision was taken to regularize the strike period i.e. 19.11.1991 to 4.2.1992 against the earned leave



and advance earned leave of the employees concerned and which decision is present in the letter dated 10.2.1992 of the Joint Secretary enclosed at Annexure-2. A decision was also taken not to proceed against the striking employees except those who were found involved in act of violence or who had been proceeded for any illegal action. Such decision is present in the letter of the Joint Secretary dated 27.3.1992 enclosed at Annexure-3. The documents thus present at Annexures-2 and 3 would manifest that not only the Government had taken a lenient attitude towards striking employees rather penal action was restricted only against such of the employees who had resorted to violence during the strike period or against whom action had been initiated for indulging in unlawful acts.

Adverting to the case in hand, these petitioners were proceeded against, by service of charge sheet bearing Memo No. 2761 dated 1.10.1994, a copy of which is present at Annexure-9. Six charges were drawn against the 10 petitioners namely:-

- (i) The petitioners were charged with putting up hoardings on the Durga Puja Bhawan as well as in the office of the Raj Bhawan Employees Union at 7 P.M. on 9.11.1991 and on being protested by the guard on duty, the petitioners abused him.
- (ii) The petitioners used foul language against Hon'ble

Governor as well as his Secretary in front of the House of his Personal Assistant at 8.30 A.M. on 9.11.1991.

- (iii) The petitioners had written slogan on the wall of the Raj Bhawan and abused the guard on duty on protest being raised at 8.45 A.M. on 15.11.1991.
- (iv) The petitioners' action of going on strike was contrary to the Bihar Government Service Conduct Rules, 1976.
- (v) Though the service at the Raj Bhawan has been declared as Essential Services under the Bihar Essential Service Maintenance Act (hereinafter referred to as the 'ESMA'), yet these petitioners indulged in indisciplined conduct.
- (vi) The petitioners obstructed the other Raj Bhawan employees from doing their duty.

The petitioners denied the charges. An enquiry was held and the report is present at Annexure-17 holding the petitioners guilty of gross misconduct. The disciplinary authority by the individual orders dated 8.3.1996 impugned at Annexure- 1 series, has dismissed the petitioners from service. The petitioners preferred an appeal before the Hon'ble Governor vide Annexure-19 but the same has remained pending. The petitioners feeling aggrieved are before this Court.

Mr. Gyanand Roy learned counsel has appeared for the petitioners while the State is represented by Mr. Ashutosh Ranjan

Pandey, learned AAG-15 and the Governor Secretariat is represented by Mr. Rajendra Kumar Giri.

Mr. Roy has taken this Court through the pleadings on record to submit that of the striking employees, it is these 10 persons who were handpicked for being proceeded against. He submits that while others were allowed to join pursuant to the decision present at Annexures-2 and 3, these petitioners were not allowed to join their service and it is only subsequently that they came to know that a police case has been instituted against the petitioner giving rise to Sachivalaya P.S. Case No. 1008 of 1991 registered under Sections 4 and 5 of the ESMA. Mr. Roy learned counsel submits that although the strike ended on 4.2.1992 but the petitioners were not allowed to join and it is after more than 22 months that a suspension order was passed against the petitioners on 28.12.1993 vide Annexure-7 and which was followed by service of charge sheet almost a year thereafter on 1.10.1994 vide Annexure-9. He submits that only 3 witnesses were examined by the department namely Security Officer, Binodanand Jha, Constable Ranjeet Singh and Constable Inteshar Khan.

Learned counsel has taken this Court through the evidence given by the three departmental witnesses to submit that while each of the three witness has specifically named two persons i.e. Rajendra Kumar and Jalwa Ram of indulging in unlawful activities and



although they have also stated that 4 to 5 persons were writing slogans on the wall but none of these witness have named the writ petitioners as being a party to the unlawful activity. Learned counsel has referred to the evidence of Security Officer, Binodanand Jha present at pages- 97 and 99, the statement of Constable, Ranjeet Kumar at pages 100 and 102 and the statement of Inteshar Khan present at pages 100 and 104 to submit that none of three witnesses have either identified these petitioners as indulging in acts of violence, slogan writing or shouting or of obstructing the other staff from resuming duty nor have they named any of them. He submits that although two names have transpired in their evidence which is that of Rajendra Kumar and Jalawa Ram. Mr. Roy reverting to the enquiry report present at Annexure-17 submits that the findings of the enquiry officer is perverse because even in absence of any evidence connecting the petitioner with the alleged charge, he has proceeded to uphold the charge.

Mr. Roy in reference to the finding of the Enquiry Officer against charge no. 2 has submitted that it simply rests on the F.I.R. and nothing beyond. It is submitted that the criminal case arising from the F.I.R. has resulted in the acquittal of the petitioners which by itself is sufficient to strike down the finding. It is stated that the Enquiry Officer has upheld the charge simply in view of the statement made



by the witness that the petitioners were part of the striking employees. He submits that of the 73 staff posted at the Governor's House, it is only these 10 persons who have been proceeded against and even though the statement of the witness only categorizes the petitioners as part of the striking employees with no unlawful act being attributed to them yet the Enquiry Officer has proceeded to uphold the charge and which has mechanically been accepted by the Disciplinary Authority to order for a penalty of dismissal.

He submits that it is taking note of the circumstances existing where the order of dismissal is passed on no evidence that a Bench of this Court vide judgment and order passed on 11.7.2011 had allowed the writ petition. It is submitted that since one of the grounds for allowing the writ petition is the differential treatment adopted by the State towards the petitioners which according to Mr. Roy was never pressed into service, that a review application was filed by the respondents giving rise to Civil Review No.399 of 2014 and the Bench taking note of the fact situation allowed the review application and recalled the judgment dated 11.7.2011 vide judgment and order dated 23.4.2014 passed in Civil Review No. 399 on 2013 and whereafter the writ petition was restored to its file.

The argument of Mr. Roy has been contested by Mr. Pandey learned Additional Advocate General as well as Mr. Giri appearing



for the Governor Secretariat and who have unanimously supported the impugned order of dismissal by submitting that the acts complained of against the petitioners were reflective of such kind of misconduct and indiscipline that a penalty of dismissal was the only answer and has been appropriately imposed on these petitioners which does not call for any interference. It is submitted that the proceedings in question was initiated against these petitioners since it is only these petitioners along with few others, who were found responsible for the illegal acts of misconduct and the Enquiry Officer has upheld the charge on examination for the evidence on record and which view has been confirmed by the Disciplinary Authority to order for dismissal of the services of these petitioners which order of penalty does not warrant any interference.

Mr. Giri learned counsel for the respondent nos. 3 to 5 has very strenuously tried to persuade this Court with reference to the evidence led by the department, that the act of misconduct by these petitioners, is unpardonable. According to Mr. Giri, the identification of these petitioners by the witnesses, as the striking employees, itself is sufficient to uphold the charges. It is the argument of Mr. Giri that an acquittal in the criminal case for want of evidence would not enure to the benefit of these petitioners because the evidence on record of the departmental proceedings justifies the decision of dismissal.

I have heard learned counsel for the parties and I have perused the records.

A rather unfortunate reason is the foundation for the proceedings in question. The charges forming the charge memo present at Annexure 17 are very serious for it concerns the high office of the Governor of this State. Resorting to strike to press a valid demand even if condonable in exceptional circumstances, it does not bestow any right on the striking employees, of indulging either in acts of violence or to use intemperate and foul language which lowers the prestige of an office as high as that of the Hon'ble Governor. Certainly, the charges are such that the person responsible cannot be visited with any other penalty except a penalty of dismissal. My observations are exclusively on the nature of charge framed, staring at the face of these petitioners, two of whom have since deceased in the meanwhile. The issue is, whether there is any material on record to connect these petitioners with the charges.

I find it quite inexplicable as to why, when the strike in question ended in an agreement on 9.2.1992, it took more than 22 months for the respondents to initiate action against the persons whom they held responsible for indulging in acts of violence and of using foul and intemperate language against Hon'ble Governor. My observations are in reference to the pleading on record which shows



that while a conscious decision was taken by the State Government on 10.2.1992 to regularize the strike period by adjusting the period against the earn leave and advance earn leave of the employees, another decision was taken on 27.3.1992, for a restrained action of proceeding only against such of the striking employees who were found guilty of violence.

Annexure-5 is the copy of the F.I.R. instituted against 22 staff posted in the Governor's House for having gone on strike in violation of the provisions of the 'ESMA' which prohibits them from joining any strike. Considering the decision of the State Government present at Annexures-2 and 3 along side the F.I.R. present at Annexure-5, one thing that becomes clear is, that even though these petitioners along with some others were charged with allegedly violating the provisions of ESMA there is no allegation in the F.I.R against these petitioners of resorting to violence or of destruction of Government property. The F.I.R. was instituted on 8.12.1991 i.e. much prior to the decision of the State Government to regularize the service of the striking employee against their earn leave taken on 10.2.1992, as well as the decision to proceed only against such of the employees who were found indulging in violence taken on 27.3.1992. As I have stated, there is not a whisper in the F.I.R. which would show that any of these petitioners had resorted to violence although sweepingly the accused

have been charged of writing slogans within the premises and of using foul language. The judgment in the criminal case is present at Annexure-20 and acquits all the accused of the charges on the failure of the prosecution to lead supporting evidence. The acquittal thus, is not on a technicality but for want of evidence.

The charges in the department proceedings initiated against the petitioners impugned at Annexure-9 and the accusation in the criminal case as reflecting from the F.I.R. enclosed at Annexure-5 are word by word identical. Now although the petitioners have been acquitted of the criminal charges for want of evidence but then law is well settled and an acquittal in the criminal case for want of evidence may not by itself be sufficient for the petitioners to seek exoneration even in the departmental proceedings. The Crux of the issue is, whether at all, there is any evidence available on the record of the departmental proceedings to uphold the charges levelled against these petitioners in the departmental proceedings.

Mr. Gyanand Roy has taken this Court through the evidence given by the three witnesses led by the department which as I have already noted, is present at page 95 and 99 in so far as Binodanand Jha P.W.1 is concerned; page 100 and 102 in so far as P.W. 2 Constable Ranjeet Kumar is concerned and page 101 and 104 in so far as P.W.3 Inteshar Khan is concerned. As rightly pointed out by Mr.



Roy each of the three witnesses though have named Rajendra Kumar and Jalwa Ram as being the persons who were putting the banners within the premises of the Governor House but in so far as the charge of writing slogans on the wall of the Governor House and of using foul and intemperate language is concerned, there is not even a whisper of evidence on record connecting either of these petitioners to the alleged charge. Although Mr. Giri has very strenuously tried to persuade this Court that the very identification of these petitioners by the witnesses, by itself would be sufficient to uphold the charge but in my opinion, considering that each of the witnesses have merely stated that 4 to 5 persons had indulged in writing slogans over the wall of the premises of the Raj Bhawan and some had attempted to obstruct the staff from doing their duty, such vague evidence in absence of either physical identification or by name, cannot be a foundation for imposing an extreme penalty of dismissal. A mere reference by the witness Binodanand Jha and Inteshar Khan that the striking employees were present, would be stretching their evidence beyond its seams to hold the petitioners guilty of the alleged charge. I am conscious of the legal position that a charge in a departmental proceeding need not be proved beyond all reasonable doubts as in a criminal proceeding and if there is any evidence to connect the charge on a delinquent then the High Court in exercise of powers of judicial

review would not enter into facets of weighing the evidence or considering its sufficiency or adequacy but then as I have observed, there has to be some evidence available on the record of the departmental proceedings to connect a delinquent with the alleged charge.

In my opinion it is the seriousness of the charge present in the charge memo, which has swayed the Enquiry Officer to record his opinion in the proceedings, even though he was conscious of the evidence on record which in no manner connects any of the petitioners with the nature of the charge so set up against them.

The illegality in the proceedings does not stop at the stage of the recordings by the Enquiry Officer rather is perpetuated in the order of the Principal Secretary to the Governor impugned at Annexure-1 series dated 8.3.1996 which by a three line order dismisses the petitioners merely on grounds that the Enquiry Officer has upheld the charges. The order of dismissal does not reflect any application of mind by the disciplinary authority, whether the opinion of the Enquiry Officer was based on supporting evidence. The case in hand apparently is a case resting on no evidence.

Here I am tempted to reproduce the conclusion drawn by the Supreme Court in the case of **Union of India vs. H.C. Goel** reported in **AIR 1964 SC 364** which applies on all fours, to the case in hand:



“(23) That takes us to the merits of the respondent’s contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention I no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent’s case is, is there any evidence on which a finding can be made against the respondent that charge No.3 was proved against him. In exercising its jurisdiction under Art. 226 on such plea, the High court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent’s grievance is well founded, because, in our opinion, the finding which is implicit in the appellant’s order dismissing the respondent that charge number 3 is proved against him is based on no evidence.”

In my opinion, the petitioners have been met with rather an unjust treatment. Despite complete absence of evidence on record to connect the petitioners with the alleged act of misconduct yet they



have been made to face a dismissal. Even though relief came their way in the year 2011 but was short lived, as the bench proceeded to review its judgment dated 11.7.2011 passed in the present case restoring the present writ petition to its file. Although Mr. Roy has ventured to argue that the grounds for review were not one of the grounds for relief prayed by the petitioners but I would refrain myself in recording any opinion thereon.

In result, the orders of dismissal passed against the petitioner Nos. 1 to 4 and 6 to 9 and against the predecessor in interest of the substituted petitioner nos. 5 and 10 dated 8.3.1996 impugned at Annexure-1 series are held per se illegal, contrary to evidence on record and a perversity defined and are accordingly quashed and set aside. The petitioners stand restored on their respective posts and would be entitled to 50% of their salary together with all consequential benefits. In case of such of the petitioners who have superannuated or have deceased in the meanwhile, they would be entitled to 50% of salary together with all consequential benefits until reaching the date of superannuation/death, as the case may be and thereafter to the retiral benefits as found admissible to them in law. In so far as the payment of salary for the period of strike is concerned, all the petitioners would be entitled to the salary benefits as accorded to the other striking employees. The amounts admissible to the

petitioners should be calculated and should be provided to them within three months from the date of receipt/production of a copy of the order.

The writ petition is allowed but without any order as to costs.

(Jyoti Saran, J)

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CAV DATE	
Uploading Date	17.9.16
Transmission Date	