

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14595 of 2012

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Surendra Roy, S/O- Late Ramashish Roy, resident of Village- Chaktulla, P.S.-
Hajipur Sadar, District- Vaishali

.... Petitioner.

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.

.... Respondents.

With

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Civil Writ Jurisdiction Case No. 20862 of 2012

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Gayanand Yadav, Son of Shri Dinesh Chandra Yadav, resident of Village + P.O.-
Khutaha, P.S. Lodipur, District Bhagalpur

.... Petitioner.

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna
3. The Principal Secretary, Rural Development Department, Government of Bihar, Patna
4. The Commissioner, Purnea Division, Purnea

.... Respondents

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Appearance :

(In CWJC No. 14595 of 2012)

For the Petitioner/s : Mr. Abhay Kumar Singh, Sr. Advocate
Mr. Abhinav Srivastava, Advocate

For the Respondent/s : Mr. P. N. Sahi, AAG14

(In CWJC No. 20862 of 2012)

For the Petitioner/s : Mr. Rajeev Verma, Sr. Advocate
Mr. Abhinav Srivastava, Advocate

For the Respondent/s : Mr. Sunil Kr. Mandal, SC24

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 20-05-2016

Heard learned counsel for the petitioners and the
respondents.

2. Both the writ applications, bearing C.W.J.C. No.

14595 of 2012 and C.W.J.C. No. 20862 of 2012, are being disposed of by a common order, as the facts and issues are common.

3. Both the petitioners have been dismissed from service pursuant to departmental enquiry. The petitioner Surendra Roy of C.W.J.C. No. 14595 of 2012 has been dismissed vide resolution, dated 17.02.2012, of General Administration Department of the State Government, whereas petitioner Gayanand Yadav of C.W.J.C. No. 20862 of 2012 has been dismissed from service also vide separate resolution, dated 17.02.2012.

4. The petitioners, who were at one time Block Development Officers of Palasi block, within Araria district, have sought quashing of the resolutions, dismissing them from service.

5. Before I consider the relative merits of the parties, it would be relevant to notice the facts of the case in brief:

6. The petitioner Surendra Roy, who is a Member of Bihar Administrative Service, came to be posted in Palasi Block within Araria District from 14.10.2005 to 19.04.2007. Similarly, Gayanand Yadav, the petitioner of C.W.J.C. No. 20862 of 2012 succeeded him as Block Development Officer, Palasi from 19.04.2007 to 29.01.2009. It is relevant to state here that one Md. Shamim Akhtar was earlier posted as Block Development Officer of Palasi Block from 04.01.2004 till 09.05.2005. Identical charges were framed

against all three of them. The charge, in short, were as under:

(i) The petitioner deposited SGRY funds in PACS account by opening a new Account No.13, dated 17.1.2004 instead of depositing the amount in a nationalized bank or a post office as per guidelines of the Central and the State Government;

(ii)The funds deposited in the Dehti PACS account were misused for which the petitioner was fully responsible.

7. On conclusion of the enquiry, the enquiry officer exonerated all the three officers for the charges of misuse of money deposited in the PACS. However, the enquiry officer held them guilty of not depositing the SGRY fund in a nationalized bank or a post office in violation of the instructions of the department. The enquiry officer observed that all the three delinquents ought to have deposited the fund in a nationalized bank or post office instead of depositing it with the local PACS. In the meantime, the Chief Secretary, Government of Bihar by his order, dated 09.01.2010, insisted for a fresh enquiry to establish that payment made to the beneficiaries under Indira Awas Yojana was mythical and to obtain statements/representations from the identified beneficiaries with regard to non-payment of the fund to them.

8. In view of order of the Chief Secretary, dated 09.01.2010, a supplementary/amended charge was framed against all



the three delinquents i.e. the two petitioners herein and Md. Shamim Akhtar. Again there were two allegations in the amended charge sheet as well, which were not much different from the charges contained in the first charge sheet, dated 11.2.2009. To be specific, the first charge reiterated, that fund was deposited with Dehti PACS, in breach of government circulars to deposit the same either in a nationalized bank or a post office. The second supplementary charge was that the petitioners used the funds for personal gain in connivance with the Manager, Dehti PACS and other intermediaries.

9. In their reply, again the petitioners denied the charges. A fresh enquiry was held. In the fresh enquiry all the three delinquents were held guilty of the charges.

10. On the basis of the second enquiry report, second show cause notice was issued without copy of the enquiry report. All the three delinquents, including the petitioners protested. However, all of them, obtained on their own, a copy of the enquiry report and submitted their reply to the second show-cause.

11. Not being satisfied with the explanation of any of the three delinquents, the General Administration Department inflicted punishment of dismissal from service vide separate resolution, dated 17.02.2012. All the three delinquents including the present two writ petitioners, challenged the impugned proceeding as well as order of



punishment by filing separate writ application in this Court. The writ application filed on behalf of Md. Shamim Akhtar, bearing C.W.J.C. No. 723 of 2013, was allowed on 15.03.2016. As the two matters before me arose from identical charges and proceeding, as in case of Md. Shamim Akhtar, they were heard on priority basis on ground of parity.

12. The petitioners in both the writ applications have substantially taken the same plea, which were taken by Md. Shamim Akhtar (C.W.J.C. No. 723 of 2013). They too submit that they were unaware of any circulars/Government instructions, which directed that the SGRY funds should not be deposited in the local PACS or should be deposited in a nationalized Bank or a post-office. Elaborating their submissions, learned counsel for the petitioners submit that the respondents have not brought any material on record to bring home the charge that they were aware of any such instructions issued from the Department.

13. It is relevant to recall that this Court in the case of Md. Shamim Akhtar, quashed the finding of the enquiry officer and the report of the second enquiry officer, and also the order of disciplinary authority, holding that there were no cogent materials for establishing the charges. This Court was conscious of the fact that the scope of judicial review in the matter of judicial proceeding is limited



to correction of error of procedure and error of law. This Court would not sit over the judgment of the disciplinary authority and substitute its own views for the views recorded by the enquiry officer or the disciplinary authority, if it is based on some evidence. The Court would neither delve into the sufficiency or otherwise of the materials, on which the findings have been recorded. Nonetheless, it is equally true that if the findings are based on no materials, or materials not germane to the facts of the case, then this Court would not hesitate in striking down the findings.

14. In the light of the well recognized principle, I would now proceed to consider the petitioners' case that the findings of the enquiry officer and disciplinary authority are based on cogent evidence.

15. We would first consider charge no.1, as per which the petitioners have been charged for depositing the SGRY funds with local PACS in breach of the Government circulars to deposit the same either in a nationalized Bank or a Post-office. It appears that petitioner Surendra Roy succeeded Md. Shamim Akhtar, as Block Development Officer, Palasi Block on 14.10.2005 and on which post he continued till 19.04.2007. He was succeeded by one Gayanand Yadav, the petitioner of C.W.J.C. No. 20862 of 2012, who remained on the said post from 19.04.2007 to 29.01.2009.

16. The case of the petitioners' is that they were not in receipt of any instructions that the money was to be deposited in a national Bank or a Post-office. On the other hand, the petitioners have referred to Memo No. 1736, dated 02.12.2000, issued by the Deputy Development Commissioner, Araria, which permitted depositing of SGRY funds in PACS account.

17. I find that the respondents have not been able to produce any documents on record to establish that any Government instructions were received in the petitioners' office to the effect that SGRY funds was to be deposited in a national Bank or a Post-office. In this view of the matter, it is difficult for me to hold the petitioners guilty of first charge.

18. This takes me to the second charge, as per which the petitioners misused the government funds for their personal gain, as was the charge in case of Md. Shamim Akhtar. I find that the first enquiry officer had exonerated the petitioners of the said charge. However, the second enquiry officer indicted them of the said charge on the report of one Brajesh Kumar, who in turn relied upon the statements of three beneficiaries. Admittedly, neither the enquiry report of Brajesh Kumar, nor the statement of three beneficiaries, were brought on record, as such the findings recorded by the enquiry officer holding the petitioners guilty of this charge, is not based on

any cogent material, worth the name. I further find that the respondents at the stage of issuance of show-cause had already made up their mind to hold the petitioners guilty and to punish them, as necessary approval for dismissal was already taken from the Hon'ble Chief Minister on 18.04.2011.

19. A decision to hold a person and to inflict major punishment at the stage of issuance of second show-cause notice renders the consideration of such reply an empty formality, which is impermissible in law in view of law laid down by the Hon'ble Apex Court in case of **Oryx Fisheries Private Limited vs Union of India & Ors.**, reported in **(2010) 13 SCC 427**.

20. In view of the forgoing reasons, I am of the considered view that the disciplinary authority has failed to produce relevant materials on record to establish the guilt of the petitioner. The enquiry proceeding was conducted in breach of well established norms and principal of law.

21. In the result, both the writ applications are allowed. The enquiry report, the findings of guilt recorded by the disciplinary authority are set aside. The petitioners would be reinstated in service forthwith will consequential benefits.

22. Mr. P. N. Shahi, learned senior counsel for the State submits that the matter may be remanded to the disciplinary authority

for further enquiry. I need not express any view of my own on the matter and it would be up to the disciplinary authority to take appropriate steps.

23. The writ applications are thus allowed.

(Samarendra Pratap Singh, J.)

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