

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11378 of 1997

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1. Smt. Pramila Bala, wife of Late Jagat Narain Prasad (original petitioner)
 2. Nirnimesh Anand, son of late Jagat Narain Prasad.
 3. Abhishek Anand, son of late Jagat Naran Prasad.
 4. Saurabh Anand, son of late Jagat Narain Prasad.
 5. Pratiksha Anand, daughter of late Jagat Narain Prasad.
 6. Samikala Anand, daughter of late Jagat Narain Prasad.
- All are residents of Ram Dayalu Path, Ramdayalunagar, P.S.- Kani Mohammadpur,
P.O.- Ramana, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary cum Commissioner, Water Resources Department, Bihar, Patna.
2. Engineer –in- Chief cum Additional Commissioner and Special Secretary, Water Resources Department, Bihar, Patna.
3. The Joint Secretary to Government, Water Resources Department, Bihar, Patna.
4. The Deputy Secretary to Government, Water Resources Department, Bihar, Patna.
5. The Chief Engineer, Water Resources Department, Siwan, District- Siwan.
6. The Superintending Engineer, Gandak Canal Circle, Siwan.
7. The Executive Engineer, Water Drainage Investigation Division, Gandak Project, Chapra Division.
8. The Sub-Divisional Officer, Water Drainage Investigation, Gandak Project at P.O.- Parsa, District- Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar
Mr. Manindra Nath Tiwari

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-11-2016

Heard Mr. Sanjeet Kumar, learned counsel appearing on behalf of the petitioners. There is no representation on behalf of the State.

The original writ petitioner Jagat Narain Prasad (hereinafter referred to as the ‘deceased petitioner’) has deceased and has been substituted by his legal heirs under the order of this Court passed on 30.8.2012 in I.A. No.5391 of 2012. The petitioners herein are aggrieved by the order bearing No.977 dated 13.9.1997 of

the Deputy Secretary, Government of Bihar, Water Resources Department, Patna, whereby the original petitioner had been dismissed from service. A copy of the order of dismissal is impugned at Annexure-1 to the writ petition.

The charge memo framed against the 'deceased petitioner' is impugned at Annexure-6 to the writ petition and charges him of defalcation of 222.447 metric tons of iron rod. As per the charge, while the 'deceased petitioner' was directed to dispatch the iron rod of 16 mm. and 20 mm. diameter but it is alleged that the petitioner dispatched the rod of different specification weighing 222.447 metric tons valued at Rs.12,23,458.50 which never reached its destination.

A departmental enquiry was held and one M.N. Mukherjee was appointed as the Enquiry Officer. The 'deceased petitioner' made a request for supply of the documents connected with the allegation vide his application present at Annexure-7 but the request was rejected by the Superintending Engineer who was the Conducting Officer vide his order dated 6.6.1985, a copy of which is present at Annexure-8. The 'deceased petitioner' renewed his prayer by filing representation before the Chief Engineer on 6.2.1986 vide Annexure-9 which again did not give any fruitful result. The suspension of the petitioner was revoked vide order dated 18.2.1987 placed at Annexure-10 and the petitioner was posted



initially to Birpur and thereafter to Jamshedpur vide Annexure-11 and 11/A respectively. As per the writ petition, nothing was heard by the petitioner in respect of the disciplinary proceeding until he received the impugned order dated 13.9.1997. A copy of the order is impugned at Annexure-1 to the writ petition and feeling aggrieved the petitioner is before this Court.

Mr. Sanjeet Kumar, learned counsel appearing for the petitioners has with a particular reference to the statement made in paragraph 20 of the writ petition submitted that the disciplinary enquiry remained inconclusive and in the meantime the Superintending Engineer –cum- Enquiry Officer, Sri M.N. Mukherjee superannuated in 1987. According to Mr. Kumar, though the petitioner after the revocation of his suspension was transferred to different places but nothing was heard by him in respect of the disciplinary proceeding. It is his argument that it is after a decade of the revocation of suspension on 18.2.1987 that he received the order of dismissal dated 13.9.1997 and which was passed de hors the provisions of rule-55 of the Bihar Civil Services (Classification, Control and Appeal) Rules 1930 (hereinafter referred to as ‘the Rules’) which was in force at the relevant time.

Learned counsel has next referred to the FIR instituted by the petitioner, a copy of which is enclosed at Annexure-3 to the writ petition to submit that the ‘deceased petitioner’ himself had

instituted a criminal case against one Junior Engineer as regarding the missing iron rods giving rise to Parsa P.S. Case No.66 of 1984 and which by itself clears all doubts raised against the 'deceased petitioner'.

The short argument advanced by Mr. Kumar to question the disciplinary proceeding is that whereas the allegation is not resting on tangible piece of evidence, in view of the FIR instituted by the 'deceased petitioner', it clears the confusion whatsoever regarding his involvement. It is further the argument of learned counsel that in absence of due notice regarding holding of disciplinary proceeding since after superannuation of the Enquiry Officer, the entire proceedings culminating in the order of dismissal stands vitiated.

The writ petition was admitted for hearing vide order passed on 16.3.1999. Though this matter was also taken up at the stage of hearing on different dates and lastly heard by this Court on 29.7.2016, when the issue raised by learned counsel appearing for the petitioners was taken note of and the learned Additional Advocate General No.3 was afforded time to assist the Court on the issue raised. The matter was next taken up on 12.8.2016 when on request made the Assisting Counsel to Additional Advocate General No.3 the matter was again adjourned to enable him to ascertain the status of the criminal case instituted by the deceased Government

servant who was the original petitioner before this Court. The matter has thereafter been taken up today when I have said that there is no representation on behalf of the State.

Mr. Sanjeet Kumar, learned counsel appearing for the petitioners has submitted that it is pursuant to the direction of this Court that a copy of the supplementary counter affidavit has been served upon him by the State Counsel and paragraph 4 to the supplementary counter affidavit would show that not only a criminal case was instituted by the 'deceased petitioner' rather even the department had instituted a case giving rise to Dighwara P.S. Case No.70 of 1984 and the investigating agency has submitted charge-sheet in each of the two cases. While the charge-sheet was submitted against Motilal Khaitan and Gopi Ram in Dighwara P.S. Case No.70 of 1984 while showing one Vikrama Singh as an absconder, charge-sheet was also submitted in the case instituted by the petitioner bearing Parsa P.S. Case No.66 of 1984 against MotiLal Khaitan and Gopi Ram again showing Bikram Singh as absconder. However, a letter of the Superintendent of Police, Saran at Chapra dated 8.9.2016 enclosed with the supplementary counter affidavit reflects that both the criminal cases have since been disposed of.

Mr. Sanjeet Kumar has also referred to a letter bearing No.2060 dated 30.6.1997 of the Deputy Secretary, Water Resources Department, a copy of which is present at Annexure 'A' to the

counter affidavit, to submit that the second show cause notice itself is sufficient to confirm that neither any enquiry was held nor any report was submitted.

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

The issue raised by the petitioner as taken note of hereinabove by this Court as well as in the order dated 29.7.2016 remains uncontested in so far as the petitioner has specifically stated that since after superannuation of the Superintending Engineer-cum-Enquiry Officer Sri M.N. Mukherjee in 1987 no notice was served on the petitioner regarding appointment of new Enquiry Officer or regarding holding of a disciplinary proceeding.

The charge set up against the petitioner as manifest from the charge memo enclosed at Annexure-6 while simply charges the 'deceased petitioner' of transferring iron rods of incorrect specification weighing 222.447 metric tons valued at Rs.12,23,458.50, it also takes notice of the complaint of the Executive Engineer and further mentions that these transferred rods never reached its destination. The 'deceased petitioner' was thus charged with forgery and defalcation. The arguments advanced by Mr. Sanjeet Kumar raises three issues to question the proceeding, namely:

(a) There was no infirmity in the action of the 'deceased

petitioner. inasmuch as while he had transferred the rods in question, its non-receipt at the place of destination, had resulted in institution of a criminal case at the instance of the 'deceased petitioner' himself;

- (b) The allegation of forgery and allegation of defalcation are based on no evidence;
- (c) The enquiry was held ex-parte as no notice was communicated to the petitioner. The enquiry whatsoever remained conclusive till the service tenure of the Superintending Engineer –cum- Enquiry Officer Sri M.N. Mukherjee who superannuated in 1987 and whereafter there is no communication of appointment of either a new Enquiry Officer or for holding of the disciplinary proceedings.

In fact, what is argued by Mr. Sanjeet Kumar stands confirmed by the second show cause notice, a copy of which is enclosed at Annexure-A to the counter affidavit. The Disciplinary Authority i.e. the Deputy Secretary, Water Resources Department, Government of Bihar has while discussed the initiation of the disciplinary proceeding vide resolution bearing Memo No.2025 dated 19.12.1984 but save and except such initiation there is no discussion as to when since thereafter any enquiry report was submitted. In fact while the Deputy Secretary at page 1 of the second



show cause notice has mentioned about the initiation of the proceedings vide the memo in question he rather strangely relies upon some memo to hold that a report was submitted by the Enquiry Officer. Obviously this is incorrect because the Deputy Secretary relies upon same memo for both purposes i.e. regarding initiation of a disciplinary proceeding as well as regarding the submission of the enquiry report. The counter affidavit also does not enclose any enquiry report. These instances are sufficient to uphold the contentions advanced by learned counsel for the petitioners that the order of dismissal has been passed without holding a proper enquiry as envisaged under rule 55 of the Rules in question.

The order impugned is thus fit to be set aside on the procedural infirmity itself. Even otherwise while it is the specific stand of the petitioner that he has instituted a criminal case against the accused persons regarding loss of iron rods, the explanation given by the petitioner was not found to be incorrect rather the investigating agency has proceeded to also submit charge-sheet in the case instituted by the petitioner. Meaning thereby the complaint of missing iron rods was not found to be false. In such circumstances and in absence of any piece of evidence connecting the charge of defalcation or misappropriation so levelled against the 'deceased petitioner' with his conduct, in my opinion, the allegation as upheld by the impugned order, is resting on no evidence.

For my discussions hereinabove the order of dismissal passed against the 'deceased petitioner' is neither sustainable on merits nor is sustainable on procedural lacunas as taken note of hereinabove.

In result, the order of dismissal bearing Memo No.2902 dated 13.9.1997 issued under the signature of the Deputy Secretary, Water Resources Department, Government of Bihar impugned at Annexure-1 cannot be upheld and is accordingly quashed and set aside.

The consequences shall follow in form of payment of 50% of salary to which the 'deceased petitioner' would have been found entitled from the date of dismissal till the date of superannuation as well as the payment of post-retiral/terminal benefits to which the legal heirs are found entitled and which should be paid to the legal heirs of the 'deceased petitioner' within three months from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30-11-2016
Transmission Date	NA