

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18815 of 2014

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Sheo Kumar Prasad Son of Late Baleshwar Mahto, Resident of Village- Raja Kuan,
P.S.- Bihar Sharif, District- Nalanda

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Govt. of Bihar, Old Secretariat, Patna
2. The Additional Secretary, General Administration Department, Govt. of Bihar, Old Secretariat, Patna
3. The Joint Secretary cum Conducting Officer of the Department Proceedingh, Government of Bihar, Old Secretariat, Patna
4. The State Disability Commissioner, Social Welfare Department, Government of Bihar, Sinchai Bhawan Campus, Harding Road, Patna
5. The Section Officer cum Presenting Officer (Section- 09), General Administration Department, Govt. of Bihar, Old Secretariat, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Uday Pratap Singh
Mr. Amarendra Kumar
For the Respondent/s : Mr. Sanjay Mandal, AC to SC-6

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 05-05-2016

Heard counsel for the petitioner and learned
counsel appearing for the State.

1. Petitioner seeks quashing of the order, dated
15.09.2014, passed by the Additional Secretary, General
Administration Department, Government of Bihar, whereby he
has been imposed with major punishment of dismissal from
government service.

2. A counter affidavit has been filed by the State

opposing the relief sought in the writ application.

3. Before I consider the rival submissions of the parties, it would be necessary to notice the relevant facts of the case in brief.

4. The petitioner was appointed as Personal Assistant in the year 1988 and was posted in Personnel & Administrative Reforms Department, Government of Bihar, Patna. In the year 2003, a limited competitive examination being called as, "1st Bihar Administrative Service (Limited) Examination, 2003" was conducted for promotion to the post of Deputy Collector from Class-III employees. The petitioner participated in the limited examination and was declared successful. Later on, it transpired that a large scale of bungling has been committed in processing the result of the candidates, who appeared in the competitive examination, in conspiracy with the employees and officials of Bihar Public Service Commission (for short "BPSC"). A vigilance case was instituted. The petitioner was also made accused in the vigilance case. A departmental proceeding was also started against the petitioner. The charge against the petitioner was that he got himself declared successful in the examination by manipulating the answer sheets in league with the employees and officials of the BPSC. The inquiry officer recorded findings of guilt. The Disciplinary Authority, after issuing a 2nd show-cause, agreeing

with the findings of the Inquiry Officer, awarded punishment of dismissal from service.

5. The petitioner has challenged the order of punishment as well as the proceeding on more than one ground. He submits that the proceeding was not conducted in accordance with law. Necessary documents were not supplied to him. No witness was examined in the proceeding. No one came forward to support the allegation that the petitioner, in conspiracy with the others, managed to declare himself successful by erasing the wrong answers and substituting it with correct answers.

6. On the other hand, learned counsel for the State has justified the impugned actions. He submits that the petitioner has an alternative remedy of appeal available under the law.

7. I find that the order of punishment has been passed by the Department of General Administration, Government of Bihar. No useful purposes would be served by relegating him to the remedy of appeal, which would be heard in fact by the same authority. In the instant case, it would appear from the inquiry report that petitioner has been found guilty as the rubber has been used in correcting the answers on 85 occasions. It is the case of the Respondents that Strong Room was surreptitiously unlocked, answer-sheets were taken



out and thereafter, the answer-sheets were corrected by using rubber. A criminal case was instituted also. The Authorities decided to cancel the result of all such applicants in whose cases rubber was used for more than 49 times for erasing and correcting the answers. It was inferred that the petitioner has managed to correct his answer-sheets with the help of staff and employees of BPSC. It would appear from the inquiry report that the Presenting Officer admitted that he only has those documents which are mentioned in the charge-memo. The petitioner falsely states that he had access to F.I.R. and letters of the Investigation Bureau, mentioned in the charge-memo.

8. I it is true that in a departmental proceeding, a person can be held guilty on the basis of documentary evidence. But when there is no positive inference that the delinquent, after examination, corrected his answer-sheets in conspiracy with others by using rubber 85 times, the witnesses were required to support such allegations. No witness, much less of the Vigilance Investigating Bureau, was examined to prove the allegations, except for the vigilance report alleging conspiracy between the examinees and employees and officials of BPSC.

9. In this view of the matter, the inquiry report suffers from lack of legal evidence and the impugned order of

punishment, based on the same, too stands vitiated.

10. In the result, the inquiry report and the order of punishment are set aside. In the facts of the case, the matter is remitted to the Inquiry Officer to proceed further in the matter in accordance with Rule 17 of Bihar CCA Rules. In view of nature of allegations, there would no automatic reinstatement of the petitioner. He would continue to remain under suspension till the disposal of inquiry.

11. The writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J)

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