

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17091 of 2008

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1. YAVITRI DEVI, WIFE OF LATE RAM SUBENDRA SINGH
 2. KUMARI JYOTI SINGH, DAUGHTER OF LATE RAM SUBENDRA SINGH
 3. KUMARI CHANCHALA, DAUGHTER OF LATE RAM SUBENDRA SINGH
 4. KUMAR VISHAL, SON OF LATE RAM SUBENDRA SINGH, ALL RESIDENTS OF VILLAGE JURAWANPUR GOPALPUR POLICE STATION BIDUPUR, DISTRICT VAISHALI

.... Petitioner

Versus

1. THE STATE OF BIHAR
2. THE DEPUTY SECRETARY, WATER RESOURCE DEPARTMENT, GOVERNMENT OF BIHAR, PATNA
3. THE DEPUTY SECRETARY, WATER RESOURCES DEPARTMENT, GOVERNMENT OF BIHAR, PATNA
4. THE CHIEF ENGINEER, WATER RESOURCE DEPARTMENT, DEHRI, ROHTAS
5. THE EXECUTIVE ENGINEER, SONE CANAL DIVISION ARA, POLICE STATION NAWADA, ARA, BHOJPUR

.... Respondents

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Appearance :

For the Petitioner : Mr. Hemendra Pd.Singh, Advocate and
Mr. Suraj Bansh Roy, Advocate
For the Respondents : Mr. Mithilesh Kumar Pathak, SC 7 with
Mr. S.Rahman and AK Prasad, Advocates

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 30-03-2016

The original petitioner Ram Subendra Singh (herein after referred to as 'the petitioner') sought quashing of Memo no. 248 dated 17.3.2008, issued by respondent no.2 affirming Memo no. 894, dated 21.8.2003, issued under the signature of the Deputy Secretary, Water Resources Department, Government of Bihar.

2. On 31.8.1991, petitioner was posted as Divisional Cashier in Sone Canal Division, Ara in the office of Executive Engineer, Sone Canal Division, Ara. In July, 1995, one Birendra Singh Prabhakar joined as Executive engineer, Sone Canal



Division, Ara and petitioner was working under him as Cashier. As per Government instruction, one key of the official chest was used to be kept by the petitioner as the cashier of the office, while another key of the chest used to be kept by the Executive Engineer, namely, Birendra Singh Prabhakar, as the Drawing and Disbursing Officer. It is petitioner's case that in between April, 1997 to 23.6.1997, said Mr Prabhakar took out substantial amount from the official chest on the plea that money were to be disbursed to the contractors and being a subordinate could not object much to his action. In course of time, Mr Prabhakar was transferred to the post of Technical officer, Flood Control Circle, Khagaria and was directed to hand over the charge by 23.6.1997, to the new incumbent, namely Jail Mangal Paswan. The petitioner also requested Mr. Prabhakar to deposit the entire money and to return the official record kept by him.

3. Later, on 25.7.1997, a departmental proceeding was initiated against the petitioner. He was alleged to have connived with Mr Prabhakar in defalcating Government money and not maintaining the official records. In the departmental enquiry, the petitioner was found guilty of all the four charges. He was dismissed from service on 19.12.2001. The petitioner being aggrieved, challenged the dismissal order in C.W.J.C.No. 1228 of



2002. The writ petition was disposed of on 12.2.2002, and the order of punishment was quashed with direction to the respondents to furnish the relevant documents required by him. In terms of the order dated 12.2.2002, passed in C.W.J.C.No. 1228 of 2002, the proceeding commenced from the stage of furnishing of relevant documents. The petitioner was again held guilty in the departmental enquiry and was again awarded punishment of dismissal from service vide order dated 21.8.2003, which he challenged in C.W.J.C.No. 13435 of 2003. The writ petition was disposed of on 13.7.2007 with liberty to the petitioner file an appeal before the Commissioner cum Secretary, Water Resources Department, Government of Bihar, Patna. The petitioner as such filed an appeal, which too was dismissed vide impugned order dated 17.3.2008 which is impugned in this writ petition.

4. The petitioner has challenged the order of punishment as well as the departmental proceeding on a number of grounds. He submits that the proceeding was conducted in breach of principles of natural justice, as he was never supplied the documents on which the prosecution had placed reliance. He was not provided an opportunity to cross examine the witnesses and to produce his own evidence. The Enquiry officer only on basis of some of documents held him guilty of the charges. In support of the submissions, learned counsel has

relied upon decision rendered in the case of Brij Bihari Singh Vs. BSFC, reported in 2016(1) PLJR 27.

5. Respondents in their counter affidavit have justified the impugned action. They submit that the petitioner and Birendra Singh Prabhakar failed to deposit Rs.2,63,390/- on 31.3.1997. The petitioner never made available the record required during handing over and taking over of charge. In the circumstances, the Executive Engineer In-charge of the Division reported the matter and FIR was lodged against the petitioner and the then Executive Engineer of the Division (Birendra Singh Prabhakar). The cash chest was opened and no money was found.

6. The case of the petitioner, in short, is that one of the keys of the official chest was with Mr. Prabhakar, who regularly withdrew the money without proper accounting despite repeated request. It is further case of the petitioner that no witness was examined to establish the charge.

7. I have heard learned counsel for the petitioner and learned counsel for the other side and perused the materials on record.

8. During the pendency of the writ petition the original petitioner died and has been substituted by his wife, two daughters and one son.

9. From perusal of the enquiry report, I find that the enquiry officer recorded his findings on basis of documentary evidence.

Further, the enquiry officer has given some details of the facts and figures emerging from the documents on which the prosecution has placed reliance. It is thus difficult for me to hold that the enquiry report is based on no materials. It is true that no witness was examined in support of the charge. I may observe here that a charge can be founded on the basis of both documentary evidence as well as oral evidence duly tendered in the Enquiry. In this view of the matter, the departmental proceeding cannot be faulted on the ground that no witness was examined. However, in view of nature of charge and the enquiry report, as well as submissions of the petitioner, I am of the view that punishment of dismissal is excessive and harsh. The petitioner cannot be solely faulted for not keeping the accounts up to date as the money was said to be withdrawn by the then Executive Engineer, who was In-charge of one of the keys of the official chest, as being drawing and disbursing officer. In this view of the matter, the punishment of dismissal is not commensurate with the offence committed by him.

10. The impugned order is accordingly set aside and the matter is remanded to the Disciplinary authority for taking a fresh decision on quantum of punishment.

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(Samarendra Pratap Singh, J)