

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3053 of 2014

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Birendra Kumar Mahto Son of Late Babuji Mahto Resident of Village and P.O.-
Khirhar Bazar, P.S.- Khirhar, District- Madhubani; at present resident of Road No.
1, Sarvoday Nagar, Baily Gola Road, P.O.- Danapur, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna
4. The Labour Commissioner, Labour Resources Department, Government of Bihar, Patna
5. The Joint Secretary, the Labour Resources Department, Government of Bihar, Patna

... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. SATISH CHANDRA MISHRA
Mr. Md. Nurul Hoda
Mr. Surya Nilambari

For the Respondent/s : Mr. Anil Kumar Verma, A.C. to AAG-9

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 17-11-2016

Heard Mr. Chitranjan Sinha, learned senior counsel
appearing on behalf of the petitioner and Mr. Anil Kumar Verma,
Assisting Counsel to AAG-9 for the State.

With the consent of the parties the writ petition has been
taken up with a view to its final disposal at the stage of admission
itself.

The petitioner is aggrieved by the order bearing Memo No.
3892 dated 15.10.2013 passed by the State Government in its Labour
Resources Department whereby the petitioner has been dismissed



from service. The order is impugned at Annexure-1 and has been affirmed again when a review application preferred by the petitioner was dismissed and communicated by the Joint Secretary vide letter dated 18.12.2013 impugned at Annexure-2.

Facts of the case briefly stated is that the petitioner holding the post of Labour Superintendent, Labour Resources Department, Government of Bihar was proceeded against departmentally for abusing his powers as a Labour Superintendent in extending registration to one Baba Satya Sai Enterprises having its office and works at 405, Annapurna Vihar, Ved Nagar, Rukunpura Bailey Road, Patna. Alongside a vigilance case was also registered and which is pending consideration before the Special Judge, Vigilance-1, Patna.

The disciplinary proceeding was initiated upon service of charge sheet dated 09.2.2007 present at Annexure-6. The petitioner filed his reply vide Annexure-7 and prayed initially for suspension of the proceedings until adjudication of the vigilance case. Ultimately the petitioner filed his reply vide Annexure-10 to the charge sheet explaining the charges. The Joint Labour Commissioner who was appointed the Conducting Officer submitted his report, a copy of which is present at Annexure-11 exonerating the petitioner of all charges and praying for dropping of the proceedings. The enquiry report is dated 29.4.2008. The matter was considered at the level of

the department in view of the enquiry report and when it was observed that any order passed in the disciplinary proceeding would prejudice the outcome of the vigilance case. The position is manifest from the notings enclosed at Annexure-12.

Rather strangely vide resolution bearing Memo No. 3153 dated 13.10.2008 the State Government not being satisfied by the enquiry report decided to hold a fresh enquiry and appointed the Labour Commissioner as the Enquiry Officer to again enquire into the proceedings. The petitioner again filed his explanation vide Annexure-14 on 07.7.2009. Midway through the Enquiry Officer cum the Labour Commissioner Upendra Kumar Rai retired and another resolution was issued bearing Memo No. 2000 dated 23.6.2016 whereby Shri Garib Sahu, Additional Secretary, Labour Resources Department was now appointed the Enquiry Officer. By the same resolution the Section Officer was appointed as the Presenting Officer.

The petitioner did not choose to question this action of the State to hold a fresh enquiry by appointing a new Enquiry Officer and whether it was in tune with the provisions of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') rather the petitioner subjected himself to the fresh enquiry. The Enquiry Officer submitted his report, a copy of

which is present at Annexure-18 upholding the charges.

The petitioner was served with a second show cause notice on the enquiry report upholding the charges vide letter dated 01.2.2012 present at Annexure-19 and which was duly responded to by the petitioner vide his show cause reply dated 05.3.2012 annexed at Annexure-20. The departmental minister recommended for imposition of penalty by withholding of three annual increments with cumulative effect as is manifest from file noting present at Annexure-21. In view of Rule 32(a) of the Rules of Executive Business the matter reached the Chief Minister through the Chief Secretary. The disciplinary authority resolved to impose a penalty of dismissal. The opinion of the Bihar Public Service Commission was sought on the proposed penalty of dismissal by the State Government vide Annexure-22 and which was rejected by the Commission vide Annexure-23. It is in the backdrop of the developments taken note of above that the penalty of dismissal was passed against the petitioner by the State Government vide resolution bearing Memo No. 3892 dated 15.10.2013 impugned at Annexure-1. The petitioner filed a review application vide Annexure-24 and which has been rejected by the State Government as communicated by the Joint Secretary, Labour Resources Department in his letter dated 18.12.2013 vide Annexure-2. The petitioner feeling aggrieved is before this Court.

I have heard learned counsel for the parties and I have perused the records. The penalty of dismissal has been questioned by Mr. Sinha on two grounds; namely:

- (a) The holding of fresh enquiry by the State Government vide resolution bearing Memo No. 3153 dated 13.10.2008 is without sanction of law and contrary to the stipulations present in 'the Rules' which merely provides for holding of further enquiry and not a re-enquiry into the matter;
- (b) The order of penalty impugned at Annexure-1 as well as the order on review impugned at Annexure-2 neither discloses reasons nor demonstrates application of mind nor the issues raised by the petitioner in his reply filed at each stage of the proceeding, has been dealt with.

Learned counsel in support of his submission that an order of penalty should disclose reasons has referred to a judgment of the Supreme Court reported in **(2010)13 SCC 427 (Oryx Fisheries Pvt. Ltd. vs. Union of India & Ors.)**, paragraph-40. It is further the argument of Mr. Sinha that a mere a surrender by the petitioner to the fresh enquiry, would not confer jurisdiction on the disciplinary authority to a re-enquiry nor would validate the proceeding.

The argument of Mr. Sinha has been contested by Mr. Anil Kumar Verma, learned Assisting Counsel to A.C. to AAG-9



representing the State to submit that the petitioner has been afforded reasonable opportunity to defend himself during the course of the proceeding and thus in absence of any lacuna on the procedural aspect of the matter, the order of punishment needs no interference. He refers to a judgment of the Supreme Court reported in **(1995) 6 SCC 749 (B.C. Chaturvedi vs. the Union of India)** to submit that there is a rather limited scope for interference in a disciplinary proceedings as upheld by the Apex Court and if the delinquent has been afforded reasonable opportunity to defend himself then the final order passed thereafter, would not require any interference if the decision making process suffers no infirmity. It is thus submitted that even if the order of penalty does not in so many words discusses the reasons, since it is an affirmation of the opinion of the Enquiry Officer on the charges, it would not require an interference.

I have heard learned counsel for the parties and I have perused the records. As I have already indicated, the order of penalty is questioned by learned counsel for the petitioner on two grounds.

Insofar as the issue of fresh enquiry is concerned, although the proposition formulated by Mr. Sinha needs no discussion nor can be disputed but it is to be seen whether the proposition would come to the aid of the petitioner. In my opinion, it is not a case where the said proposition would bail out the petitioner from the contest. No doubt



vide Annexure-13 the matter was enquired into once again by appointment of a different Enquiry Officer vide resolution dated 13.10.2008 but no objection was raised by the petitioner to this process rather he filed his reply and also participated in the re-enquiry. In fact even until the passing of the order of dismissal vide Annexure-1 on 15.10.2013, no such issue was raised by the petitioner. Even before this Court at the stage of filing of the writ petition no such issue has been raised. It is while the matter is pending before this Court that the petitioner has become wiser to file an interlocutory application after 8 years of the enquiry so held, to question the same through I.A. No. 8596 of 2016. In my opinion, the prayer cannot be allowed at such belated stage and once the petitioner has participated in the enquiry which has resulted in the order impugned, it is to be seen whether the order so passed can sustain itself.

Another aspect of the matter which does not persuade this Court to interfere on the second enquiry is that no foundational facts is pleaded in the writ petition as to the reasons which led to the enquiry and whether it was in the nature of a further enquiry or a re-enquiry into the matter. These are foundational facts which needed to be raised by the petitioner at the proper stage of enquiry which was initiated in the year 2008 and cannot be looked into at the present stage when it is the order of the dismissal which is put to question



before this Court. It is well settled that a writ remedy is available to a vigilant litigant and a person who has waived of his right to raise any objection to a decision making process, cannot be permitted to raise objections thereto more particularly after a lapse of almost 8 years. Although Mr. Sinha had endeavoured to argue that a mere delay would not provide sanctity to a void proceeding but in my opinion even if the issue reflects an irregularity, in absence of the foundational facts being pleaded by the petitioner and objections taken at the proper stage, neither the objection can be looked into nor the proceedings can be held to be void. In view of my conclusion drawn on the issue of the holding of the second round enquiry, the objection so raised by Mr. Sinha is hereby rejected.

This would bring this Court to the second issue raised by Mr. Sinha to question the order of dismissal as well as the review order impugned at Annexure-1 and 2 on grounds that it lacks application of mind, does not disclose reasons and the issues raised by the petitioner before the disciplinary authority and his response to the second show cause against proposed penalty, has not been dealt with. Paragraph-3 of the impugned order of penalty deals with the opinion formed by the disciplinary authority to impose an order of dismissal on the petitioner and all that it is mentioned is that on a review of the matter, the reply filed by the petitioner to the second show cause has

not been found to be satisfactory and acceptable and hence the Chief Minister has decided to dismiss him from service.

Even when the courts have deprecated this form of adjudication on a disciplinary matter more particularly where it proceeds to impose an extreme penalty of dismissal and a summary disposal of an objection raised by a delinquent has been looked down upon, yet the respondents have not bothered to correct themselves and continue to pass mechanical two line orders. Paragraph-40 of the judgment rendered by the Supreme Court in the case of **Oryx Fisheries Pvt. Ltd** relied upon by Mr. Sinha summaries the position as regarding the necessity of disclosure of reasons by a quasi judicial authority while adjudicating contentious issues and which in turn refers to an earlier judgment of the Supreme Court rendered in the case of **Kranti Associates (p) Ltd. Vs. Masood Ahmed Khan** reported in **(2010) 9 SCC 496**. The Supreme Court in the case of **Kranti Associates (supra)** has elaborately discussed the development of the opinion on the issue of disclosure of reasons over the period of years and has concluded at paragraph-47 as follows:

“47. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

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- b. A quasi-judicial authority must record reasons in support of its conclusions.
 - c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
 - d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
 - e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
 - f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
 - g. Reasons facilitate the process of judicial review by superior Courts.
 - h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
 - i. Judicial or even quasi-judicial opinions these



days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

- j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).
- n. Since the requirement to record reasons



emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

- o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

An adjudicatory process for determination of rights of the contesting parties, is not an empty formality rather is a serious matter and accompanies discharge of honest obligation besides reflecting a transparency in the decision making process. It also informs the affected party as to the factors which prevailed and the grounds which form the basis for the decision. It is unfortunate that even when the courts have repeatedly reiterated this position, the malady continues.

For the reasons aforementioned, the resolution bearing Memo No. 3892 dated 15.10.2013 of the State Government as the disciplinary authority of the petitioner whereby an order of dismissal

has been passed cannot be upheld and is accordingly quashed and set aside and for the same reason the order on review as communicated vide letter dated 18.12.2013 impugned at Annexure-2 becomes unsustainable and is quashed and set aside. The matter is remitted to the disciplinary authority to pass an order afresh but in accordance with law and bearing in mind of observations made hereinabove.

The writ petition is allowed.

(Jyoti Saran, J)

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