

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8869 of 2014

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1. Dr. Hari Shankar Prasad Shrivastwa Son of Late Bhrigunath Prasad
Resident of Village - Madhopur Tansariya, P.S. Turkaulia, District - East
Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Health and Family Welfare, Govt. of Bihar,
Patna
3. The Commissioner, Saran Division, Chhapra
4. The District Magistrate, Gopalganj
5. The Deputy Secretary, Department of Health, Education and Family
Welfare, Govt. of Bihar, Patna
6. The Deputy Secretary - Cum - Chief Vigilance Officer, Department of
Health and Family Welfare, Govt. of Bihar, Patna
7. The Deputy Director - Cum - Drawing and Disbursing Officer,
Department of Health, Govt. of Bihar, Patna
8. The Under Secretary, Department of Health and Family Welfare, Govt. of
Bihar, Patna
9. The Director - in - Chief, Health Service, Govt. of Bihar, Patna
10. The Regional Deputy Director, Health Service, Chhapra
11. The Civil Surgeon, Gopalganj, District - Gopalganj
12. The Sub - Divisional Officer, Hathuwa, District - Gopalganj
13. The In - charge Medical Officer, Referral Hospital, Katiya, Gopalganj
14. The Treasury Officer, Gopalganj
15. The Treasury Officer, Secretariat Treasury, Patna
16. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyavrat Verma
For the Respondent/s : Mr. P.K.Singh, S.C.12

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

6 17-11-2017 Heard both sides.

The petitioner seeks quashing of the order dated
23.02.2006 as contained in Memo No.196(9), Annexure 8 issued
by the Deputy Secretary, Department of Health, Education and



Family Welfare, Govt. of Bihar, Patna, respondent No.5 by which the petitioner has been terminated from service as In-charge Medical Officer, Referral Hospital, Katiya, Gopalganj. The petitioner further prayed for consequential relief directing and commanding the respondent to pay 1st and 2nd A.C.P. and other retiral benefits of the petitioner.

The number of facts which is relevant for disposal of this case is that the petitioner was appointed as Medical Officer on 26.07.1976 at Block Hospital Sena, Prakhand Ranchi. The petitioner was transferred to Referral Hospital, Katiya, Gopalganj as Medical Officer and he worked there from 02.03.1991 to 02.04.1998. The petitioner lodged Katiya P.S. Case No.76 of 1996 on 26.07.1996 under Section 467, 468, 471, 472, 420 and other Sections of the Indian Penal Code against Mohan Singh, Head Clerk, Referral Hospital, Katiya, Gopalganj alleging therein that Mohan Singh forged the signature of the petitioner and placed order for purchasing medicine worth Rs.97 lacs from M.S.D., Kolkata during the period of 1993 to 1994. The petitioner was suspended by notification as contained in Memo No.288, dated 02.04.1998, on allegation that the petitioner committed irregularity in purchase of medicine and violated different resolutions of the Finance Department. The Headquarters of the petitioner during



suspension period was fixed at Directorate, Health, Patna. The petitioner in pursuance thereof joined in the Directorate, Health, Patna in the month of May, 1998. S.D.O. instituted Katiya P.S. Case No.56 of 1998 under Section 409 and other Sections of the I.P.C. against the petitioner and two others alleging therein that the petitioner being the Medical Officer committed different irregularities in purchase of medicine from M.S.D., Kolkata while posted at Referral Hospital, Katiya, Gopalganj. The audit team of the Accountant General, Bihar also informed the concerned authority after auditing the records of the period 1993-94 that medicine worth Rs.97,23,574/- was purchased from M.S.D., Kolkata but the purchased medicine was not entered into the stock register of Referral Hospital, Katiya. Even the medicine was purchased beyond the limit and the allotment made for purchase of the medicine is in violation of financial rules. The C.B.I. took over investigation of Katiya P.S. Case No.56 of 1998 and the same was numbered as case No.R.C.8(A) of 2000. The case is still pending.

The petitioner was served with following memo of charges:

- (i) Despite not being authorized to purchase medicine directly from M.S.D., Kolkata but the petitioner placed the order for purchase of medicine in breach of the financial rules.



(ii) The petitioner violated the circulars and directions of the Department as contained in Letter No.176 dated 27.01.1982 and Letter No.549 dated 25.07.1991.

(iii) Medicines were purchased in excess of the amount allotted which itself is breach of the financial rules.

(iv) The purchased medicines were not maintained in the stock register which prima facie shows that it is a case of fake purchase and in fact, no medicine was purchased, the entire amount was misappropriated.

The petitioner was again served with following supplementary memo of charges as contained in Memo No.38, dated 12.01.1999: (i) the petitioner has purchased medicine worth Rs.6 lacs and odd (ii) the petitioner also purchased the medicine of Rs.16 lacs and odd (iii) the petitioner remained unauthorizedly absent from duty from the month of April to 31.08.1998. The departmental inquiry was held by the Inquiry Commissioner and the Inquiry Commissioner submitted his report(Annexure-4/1). The disciplinary authority asked second show cause from the petitioner. The petitioner submitted his second show cause on 10.03.2004 and thereafter, the disciplinary authority dismissed the petitioner from service vide order dated 23.02.2006, as contained in Memo No.196(Annexure 8).

The learned counsel for the petitioner submits that the



Inquiry Officer did not find the petitioner guilty on any four charges but the Inquiry Officer found the petitioner guilty with regard to one charge of supplementary memo of charge that the petitioner placed order for purchase of medicine worth Rs.16,31,079/- but the disciplinary authority in his show cause did not give the point of difference and stated in his show cause that the Inquiry Officer found the petitioner guilty of all the charges. The petitioner also replied in his show cause but without considering the show cause of the petitioner, the disciplinary authority dismissed the petitioner on 23.02.2016 but the order was never communicated to the petitioner. The petitioner was allowed to withdraw his subsistence allowance till the date of his retirement i.e. 31.01.2011. When the petitioner approached the authority to pay his retiral benefit, the petitioner was informed that he was dismissed from service. The learned counsel for the petitioner further submits that after submission of inquiry report, the object of serving second show cause notice is to provide sufficient opportunity to the proceedee so that the proceedee may give detailed reply. Admittedly, the Inquiry Officer did not find the petitioner guilty for main four charges of purchasing medicines of Rs.97 lacs from M.S.D., Kolkata and even with regard to purchase of medicine of Rs.6,18,414/- vide Voucher No.251/3 of



1993. The petitioner is not found guilty of willful disobedience but the Inquiry Officer found the petitioner only guilty on the charge of purchasing medicine worth Rs.16,31,097/- from M.S.D., Kolkata vide Voucher No.418/3 of 1994. All the medicines were received and duly entered into the stock. Therefore, no pecuniary loss was caused. The petitioner might have violated the financial rule but at the same time, the act of the petitioner did not cause any pecuniary loss to the Government but the disciplinary authority only asked the show cause and dismissed the petitioner from service which is violation of the procedure laid down under Rule 18 of the C.C.A. Rules, 2005 which clearly prescribes that if the disciplinary authority after perusal of the inquiry report differs with the findings of the Inquiry Report, on the basis of evidence available on record, the disciplinary authority shall record the point of difference and serve the same with the inquiry report along with second show cause to the proceedee so that the proceedee may give proper reply. The object of giving the point of difference of the disciplinary authority with the findings of the inquiry officer is to enable the proceedee to show that on the basis of the evidence available on record, the disciplinary authority has come to a different finding which is not based on correct appreciation of the evidence and, therefore, the order of



punishment is bad in law. The order of punishment is also not served to the petitioner till his retirement.

On the contrary, the learned A.C. to S.C.19 submitted that from perusal of Annexure-8, the order of dismissal issued under signature of Deputy Secretary, Health Department, it would appear that the same order was published in the official gazette and it shall be presumed that the petitioner has got information about his dismissal but I do not find any force in the submission of the learned counsel for the State on the simple ground that even the notification was published in the official gazette but the authority, the Directorate, Health, Patna where the petitioner was posted during his suspension allowed the petitioner to withdraw his subsistence allowance till the date of his retirement. Had the authority was informed about the dismissal of the petitioner, the authority would not have allowed the petitioner to withdraw his subsistence allowance. The learned counsel for the State further submits that of course, the disciplinary authority has not given his point of difference in his second show cause but the order of punishment cannot be held illegal on this ground alone. However, at the same time, the learned counsel for the State very fairly submitted that on this point, the case is fit to be remanded to the disciplinary authority so that the disciplinary authority may



proceed further in accordance with law.

Having considered the submission of the parties and on perusal of the records, I find that the disciplinary authority after submissions of the inquiry report(Annexure-4/A) issued second show cause on 22.02.2004. The letter says that the inquiry officer in his inquiry report submitted to the disciplinary authority found the charges proved against the petitioner and the disciplinary authority called upon the petitioner to give second show cause within two weeks but from perusal of the inquiry report itself, it appears that the Inquiry Officer out of six charges did not find the petitioner guilty on five charges. The Inquiry Officer found the petitioner guilty of only one charge i.e. for placing order for purchase of medicine worth Rs.16,31,079/- but the disciplinary authority while asking second show cause did not give finding of point of difference and stated that the Inquiry officer found the petitioner with guilty of all the charges. Therefore, it is apparent that the disciplinary authority has violated the rules as envisaged under Rule 18 of the C.C.A. Rules, 2005 and thus, I find the order of dismissal in violation of the procedure is vitiated as it amounts to violation of principle of natural justice and the order of dismissal is not sustainable.

In the result, this writ petition is allowed. The order



dated 23.02.2006, as contained in Memo No.196(9), issued under the signature of Deputy Secretary, Health Department, Govt. of Bihar is set aside. The matter is remanded to the disciplinary authority to proceed afresh in accordance with law.

Since the petitioner has already superannuated, the disciplinary authority shall pass the order in accordance with law within four months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

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