

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13644 of 2008

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Satya Narayan s/o Late Dagdhu Prasad, r/v – Narhi Diara P.O. – Ganga Prasad P.S. – Sahebganj in the district of Sahebganj (Jharkhand), at present posted as Superintending Engineer, Koshi Barage Circle, Birpur in the district of Supaul.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna
3. The Deputy Secretary to the Government, Water Resources Department, Govt. of Bihar, Patna
4. The Bihar Public Service Commission, through its Chairman, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. DINU KUMAR, Adv.
For the Respondent/s	:	Mr. Kameshwar Prasad Gupta (GP-10)
For the B.P.S.C.	:	Mr. Ashok Kumar Choudhary, Adv.
		Mr. Anil Kumar Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 30-01-2017

Heard learned counsel for the petitioner, learned GP-10

and learned counsel for the B.P.S.C.

The petitioner in this writ petition seeks following relief:-

(A.) For quashing of memo no. 670 dated 14.08.2008 issued under the signature of Deputy Secretary to the Government, Water Resources Department, Government of Bihar, Patna respondent no. 3 by the order as contained in annexure-12 whereby the petitioner has been reverted from the post of Superintending Engineer to the post of Executive Engineer under the Bihar Civil Services



(Classification, Control & Appeal) Rules 1930.

(B.) For giving no effect to the Notification, as contained in memo no. 670 dated 14.08.2008 contained in annexure-12 issued under the signature of Deputy Secretary to the Government, Water Resources Department, Government of Bihar, Patna respondent no. 3.

(C.) For direction to the respondents to allow the petitioner to continue to the post the petitioner was earlier functioning and other incidental relieves.

Brief facts which are relevant for the disposal of this writ petition are that the petitioner was In-charge Chief Engineer in the Water Resources Department, Government of Bihar. The petitioner was proceeded departmentally on three counts:-

Firstly, while functioning on the post of Chief Engineer he removed Aditya Narayan Jha 'Anal' Deputy Director-2, Water Science and Scheme, Home Resources Department vide order contained in letter no. 394 dated 17.05.2005 from the post of Drawing and Disbursing Officer and after backdating the office order no. 426 dated 31.05.2005 appointed Amresh Kumar Sinha Section Officer as Drawing and Disbursing Officer.

Secondly, no application for payment of salary was made in the month of May. On 17.05.2005 he put the signature on such application dated 01.06.2005 and thereby he created forged evidence.

Thirdly, he appointed Section Officer as Drawing and



Disbursing Officer against the provisions of Section 148 of Bihar Finance Rules, in which it is specifically stated that no persons below the post of Registrar-cum-under secretary shall be appointed as Drawing and Disbursing Officer. Petitioner filed his show-cause. The Enquiry conducting Officer submitted his enquiry report annexure-15. Thereafter the authority issued second show-cause, but surprisingly, in the second show-cause the authority included eight charges for which no departmental enquiry was held and the petitioner was asked to submit his second show-cause. After submission of the second show-cause of the petitioner the order reverting the petitioner from the post of Superintending Engineer to Executive Engineer as contained in memo no. 670 dated 14.08.2008 was issued.

Mr. Dinu Kumar learned counsel for the petitioner submits that firstly, the proceeding was initiated under Rule 55 of C.C.A. Rules, 1930 on 30.11.2005, as contained in memo no. 1490, but on that date C.C.A. Rules, 1930 was repealed and new Rule C.C.A. Rules, 2005 came into force with effect from 12.07.2005. It is further submitted that from perusal of the enquiry report annexure-15 it would appear that the enquiry conducting officer after submission of the show-cause by the petitioner sat on 28.12.2005, but on that date neither any oral nor any documentary evidence was brought on record. The enquiry report itself speaks that on 28.12.2005 the charges were read over to the delinquent and were scrutinized point-wise in



presence of the petitioner and Mr. Yatindra Nath who was the Presenting Officer produced the relevant records for perusal and on such, the enquiry conducting officer submitted his report. Surprisingly, after receipt of the report, the disciplinary authority issued second show-cause asking the petitioner to explain about eight charges whereas, the petitioner was proceeded only for three charges and therefore with regard to five charges no departmental proceeding was held as envisaged under Section 17 of the new C.C.A. Rules, 2005 or Rule 55 of the C.C.A. Rules, 1930, but the petitioner was found guilty and he was reverted. Therefore, the order is illegal and not sustainable.

Learned counsel for the B.P.S.C. Mr. Ashok Kumar Choudhary is present and stated that the B.P.S.C. has not recommended for any punishment as no charge was found proved.

Mr. Kameshwar Prasad Gupta learned G.P. -10 submits that so far as Rule 55 of C.C.A. 1930 is concerned, admittedly, on the date of enquiry the same was repealed. The enquiry was held under the new C.C.A. Rules, 2005.

The enquiry report as contained in annexure-15 shows that the petitioner filed his show-cause on 22.12.2005 and enquiry was held on 28.12.2005 on which charges were explained to the petitioner. Mr. Yatindra Nath, the Presenting Officer of the case only produced the relevant records for perusal, but neither any oral nor any



documentary evidence was produced during the course of departmental proceeding. In the departmental proceeding the onus is on the department to prove the charges. Of course, the provisions of the Evidence are not adhered to strictly, but nonetheless the department has to prove the charges by oral as well as documentary evidence in accordance with law, but it appears that only after seeing the records the enquiry conducting officer submitted his report without collecting any oral or documentary evidence and on the same second show-cause notice was issued. The second show-cause notice shows that the petitioner was asked to explain with regard to eight charges out of which five charges were not included in the departmental enquiry and on such annexure-12 was issued, reverting the petitioner to the post of Executive Engineer from the post of Superintending Engineer.

Therefore, I find that annexure-12 is illegal and not sustainable in the eye of law. Accordingly, the same is set aside. The matter is remitted to the department to proceed afresh in accordance with the law.

(Prabhat Kumar Jha, J.)

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