

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11235 of 2003

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Om Prakash, son of late Topan Das, resident of 79/Anandpur, Police Station-S.K.
Puri, District- Patna.

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Labour, Employment and Training Department, Government of Bihar, Patna.
3. The Secretary, Finance Department, Bihar, Patna.
4. The Director, Employment and Training Department, Bihar, Patna.
5. The Accountant General, Bihar, Patna.
6. The Bihar Public Service Commission, through its Chairman, Bailey Road, Patna.

.... Respondents

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Appearance:

For the Petitioner/s	:	Mr. Dilip Kumar Tewari, Adv. Mr. Yogendra Kumar Singh, Adv.
For the State	:	Mr. Kameshwar Prasad Gupta, G.P.-10
For the B.P.S.C.	:	Mr. Subodh Chandra Jha, J.C. to Kumar Brajendra Nath, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 06-11-2017

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Bihar Public
Service Commission.

2. In the present case, the petitioner is challenging the
order dated 27.09.2003, issued under the signature of the Secretary,
Labour, Employment and Training Department, Government of



Bihar, Patna, which is the part of the Interlocutory Application No.4652 of 2003, by which the punishment of reduction of 25% pension has been passed.

3. The facts involved in the present case is that while the petitioner was in service as Deputy Director, Training at Ranchi, a departmental proceeding was initiated against him for 16 charges and one of the charges was related to illegal appointment to the post of class-III and IV. The petitioner participated in the inquiry, he was exonerated from all the charges and the Government accepted the finding of the Inquiry Officer with respect to 15 charges. For charge no.1 the Government has obtained the opinion from the Director, Employment and Training Department, Bihar, Patna, who gave his opinion in favour of the petitioner and recorded the finding that the petitioner had not committed any illegality. The petitioner was awaiting the final order after the opinion of the Director, Employment and Training Department, Bihar, Patna, in the meantime, the petitioner became entitled for promotion to the post of Joint Director. The D.P.C. declared him fit for promotion. When the promotion was not given, the petitioner filed writ application vide C.W.J.C. No.7733 of 1998, which was allowed with the direction to take decision on the recommendation made by the D.P.C. which was in favour of the petitioner regardless of the pendency of the



preliminary investigation on alleged complaints against the petitioner. A final decision on the question of promotion of the petitioner must be taken and necessary orders must be issued within one month from the date of receipt/production of a copy of the order. It has further been held that it is, however, made clear that this direction would not prohibit the respondent authorities from proceeding with the investigation in the complaints against the petitioner. It will remain open to the respondent authorities to complete the investigation and to take a decision and follow up measures in the light of the result of the investigation.

4. Accordingly, vide order dated 14.07.199 (Annexure-5) the petitioner was promoted to the post of Joint Director, but after 12 days of the promotion, the petitioner was put under suspension on 26.07.1999 and departmental proceeding was initiated for the same set of fact and the charge. The charge was related to illegal appointment of more than the advertised posts, making allegation that he had blatantly violated the rules and regulations and on his own manner, he had illegally appointed class-IV employees, was involved in corruption. The petitioner put under suspension. Against that, the petitioner approached this Court in C.W.J.C. No.7135 of 1999 unsuccessfully. L.P.A. also could not succeed gave following directions:-



“The question as to whether earlier there was a departmental proceeding or not with regard to the same matter cannot be gone into in this appeal on the basis of the materials brought on record. However, during the present departmental proceeding, it will be open for the appellant to agitate with regard to the fact that on the same very allegation he was earlier proceeded against in a departmental proceeding and the matter was finally disposed of holding him to be not guilty of misconduct. If that would be shown by the appellant during the departmental proceeding then the disciplinary authority/enquiry officer will consider the same while taking final decision in the matter.”

5. The petitioner participated in the second departmental proceeding. He has taken objection with regard to reopening of second departmental proceeding when in first departmental proceeding dealing with the same charge he has been exonerated. The petitioner made an allegation that he had demanded certain papers, neither they were supplied nor shown to the petitioner. So, it has caused prejudice in his defence. He approached to the Hon’ble Minister In-charge with representation pointing out the direction of this Court and praying necessary action in the matter. As per the petitioner, Hon’ble Minister sought clarification, but the respondent authorities did not put the file before the Hon’ble Minister and vide letter dated 27-29.08.2001 second show cause was issued for the purposed punishment.



6. The petitioner filed a reply, wherein he raised objection about the reopening of the second departmental proceeding as well as non-supply of the documents as was demanded by him, during the pendency of the proceeding he superannuated from service, the departmental proceeding remained continued even after retirement. On the interference of this Court in C.W.J.C. No.904 of 2002 75% provisional pension was sanctioned. In C.W.J.C. No.904 of 2002 counter affidavit was filed, wherein the State took stand that the petitioner was found guilty of appointing the persons illegally. The State produced the inquiry report vide letter No.3690 dated 22.09.1999 was the revival of the proceeding on review of the fact.

7. As per the petitioner, it does not reflect that additional fact was the basis for fresh inquiry. After receipt of the inquiry report, the petitioner was asked to submit his objection with regard to inquiry report. The petitioner filed the second show-cause on 15.09.2000 (Annexure-11), giving details of his defence and requested to exonerate him from the alleged charges, but the authority passed the final order dated 27.09.2003, stipulating that the show-cause of the petitioner examined elaborately, did not find any merit passed the order, whereby pension has been reduced by 25%.

8. On perusal of the order, it appears that there is no



discussion at all about the defence what has been taken by the petitioner in his second show-cause. When the second show-cause is filed giving details of the facts, then it is the bounden duty of the disciplinary authority to consider the defence and pass the order. If they do not do so, then it will be very difficult for the higher authority to examine what was going on in the mind of the decision maker passing the order. The reason is a living link between the order and the mind of the person who has passed the order. If the link is missing then the order suffers from illegality. For that reliance can be placed on the decision reported in the case of ***Chairman and Managing Director, United Commercial Bank and Others vs. P.C. Kakkar***, reported in ***2003 (4) S.C.C., page 364***. It will be relevant to quote paragraph no.15 of the said judgment, which reads as under:-

“15. It needs no emphasis that when a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engg. Union observed: (All ER p.1154h) "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree it was observed: "Failure to give reasons amounts to denial of



justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

9. In the present case, the impugned order does not disclose the reason for rejecting the defence of the petitioner,



nowhere the authority has dealt with the objection raised by the petitioner. In such view of the matter, the order dated 27.09.2003, issued under the signature of the Secretary, Labour, Employment and Training Department, Government of Bihar, Patna passed against the petitioner for reduction of 25% pension is hereby quashed. The matter is remanded back to the respondent authority to consider the case afresh.

10. Before parting with the judgment, it will be essential to narrate certain facts as it has come through Interlocutory Application No. 3542 of 2009. In paragraph no.15 of the aforesaid Interlocutory Application, it has been stated that those who are allegedly claiming to have been appointed illegally were issued the show cause for initiation of departmental proceeding, which was challenged in C.W.J.C. No.9760 of 1999 and this Court vide order dated 17.12.2004 quashed the said show-cause and the Court has restrained the State to initiate fresh proceeding.

11. It will be relevant to quote relevant portion of the said order passed in C.W.J.C. No.9760 of 1999, which reads as under:-

“In ordinary course, perhaps this court would have directed the petitioners to file show cause and pass an appropriate order after considering the same but one aspect, which is now required to be seen, is that the matter is relating to an appointment of the year



1991-92 and the petitioners are continuously working since then. Pursuant to an advertisement they had applied and after due selection process they have been appointed on sanctioned vacant posts from the panel. Now today turning back and creating uncertainty even for them would not be properly, rather the same is in violation of law of equity which weighs entirely in their favour. Now today when the appoints have been made in view of the policy decision of the State to give employment to unemployed youths and if they have working for last 14-15 years, this court is not going to be a party to any decision, which would affect their continuance in service and perpetuate uncertainty.”

12. This order was challenged in L.P.A. unsuccessfully. S.L.P. has also been dismissed on the ground of delay and also on merit. So, in view of the aforesaid judgments, the persons who were allegedly illegally appointed have been let off inasmuch as the the A.C.P. and other benefits have been given.

13. In such view of the matter, the respondent authority while passing the order shall take into consideration the aforesaid aspects of the matter as if the persons who alleged to have been appointed illegally are still continuing in service, have been given the A.C.P. and other benefits on the basis of the judgment of the Hon'ble Supreme Court.



14. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

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