

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.565 of 2017

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Shekhar Chandra Verma, Son of Late Pradip Narayan Prasad, resident of
Rajbanshi Nagar, P.S. Shastri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Chief Secretary, Govt of Bihar, Patna.
3. Principal Secretary, General Administration Department, Govt of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Prabhat Kr Singh & Pramod Kr Singh, Advocates

For the Respondent/s : Mr Sheo Shankar Prasad, SC 8 with
Mr Anil Kumar, AC to SC 8

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CORAM: HONOURABLE MR JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-03-2017

Heard Mr Prabhat Kumar Singh, learned counsel for the
petitioner and Mr Sheo Shankar Prasad, learned Standing Counsel No
VIII for the State.

2 The petitioner prays for quashing of the Resolution of
the State Government in its General Administration Department
bearing Memo No 8/Aarop-01-245/2014, Sa Pra-6935 dated
16.05.2016 by which, while rejecting the representation of the
petitioner, penalty of censure was imposed against the petitioner for
the period, 2006-2007 in exercise of power vested under the Bihar
Government Servant (Classification of Control & Appeal) Rules,
2005 (hereinafter referred to as the *Rules*).



3 With consent of parties, this writ petition has been heard with a view to final disposal at the stage of admission itself.

4 The facts of the case, briefly stated, are that the petitioner, at the relevant time holding the post of Sub Divisional Officer, Bihar Sharif in the district of Nalanda, was made Returning Officer in the Zila Parishad Elections held in the year, 2006. The matter in question relates to the Zila Parishad Elections for Constituency No 30 in which one Manju Devi was declared elected and whose election was questioned by a contestant Satyendra Kumar. The matter reached the Election Tribunal and on receiving the notice from the Tribunal, the petitioner appeared and admitted the mistake. The matter was also brought to the notice of the District Magistrate, Nalanda who happens to be the District Election Officer for the Zila Parishad Elections. The election case was decreed in favour of the challenger and the Tribunal also imposed a cost of Rs 50,000 on the State Election Commission. Though the order imposing cost was interfered with by a Bench of this Court in a writ petition so filed by the District Magistrate bearing CWJC No 14688 of 2007 vide order present at Annexure 5 but in so far as the petitioner is concerned, the damage had been done as he was served with a chargesheet on 11.12.2006 issued under the signature of the District Magistrate, Nalanda, a copy of which is present at Annexure 10. The chargesheet



drawn by the District Magistrate, Nalanda dated 11.12.2006, present at Annexure 10, was forwarded to the Department of Personnel and Administrative Reforms for necessary action. The petitioner filed his response to the show cause vide Annexure 11. The enquiry report dated 05.07.2006 submitted by the Enquiry Officer exonerated him of the charges, a copy of which is present at Annexure 3. Even the District Magistrate, Nalanda, at that stage, was of the same opinion and vide letter dated 17.07.2006 addressed to the Secretary, State Election Commission, the District Magistrate, Nalanda opined that there was no requirement to proceed in the matter.

5 Here, I would like to mention that the allegation against the petitioner is of declaring the result without taking note of the details present on the reverse side of Form 21 rather the result was declared only on the basis of the votes count shown on the front page of Form 21. In other words, the result was declared without taking note of the totality of the vote count at each of the counting desks. Despite the position where the recommendation of the District Magistrate as well as the enquiry report was in favour of the petitioner, yet the State Government in its General Administration Department imposed a penalty of censure vide order bearing Memo No 2/C-3041/2008/9091 dated 25.06.2012. The petitioner questioned the penalty order in this Court through CWJC No 13760 of 2012 and a



Bench of this Court, taking note of the entire sequence of events as well as the material confronting the petitioner, has recorded its opinion at paragraph 23 of the judgment, a copy of which is placed at Annexure 13 by observing that it was a condonable lapse. The Bench, however, taking note of the fact that the disciplinary authority had assigned no reasons nor discussed the reply of the petitioner, quashed the order of penalty dated 25.06.2012 and remitted the matter to the disciplinary authority for passing a fresh order.

6 In between this process, the opinion of the Election Commission dated 31.10.2011 was forwarded to the Principal Secretary, General Administration Department holding the lapse as a bona fide error on the part of the petitioner as manifest from their letter placed at Annexure 14. With every opinion drawn in favour of the petitioner, yet the State Government had other views on the issue and on remand of this matter by this Court requiring the State Government to pass a speaking order that the punishment was enhanced by withholding the promotion of the petitioner for next three years and of reduction to a lower stage in the scale of pay for a period not exceeding three years without cumulative effect. The order of penalty bearing Memo No 28.11.2013 is annexed at Annexure 15 and feeling aggrieved, the petitioner came for a second round through CWJC No 5041 of 2014. The matter was heard by a Bench of this



Court and the Bench, taking notice of the fact that the punishment could only be enhanced by service of show cause notice in this regard, again quashed the order of punishment remitting the matter for a second time to the State Government in its General Administration Department for proceeding afresh. A copy of the order passed by this Court in CWJC No 5041 of 2014 is placed at Annexure 16. In the third round exercise, a notice was issued to the petitioner vide Annexure 17 and was responded to by petitioner vide Annexure 18 to result in the order of punishment impugned herein whereby the State Government had again imposed the penalty of censure against the petitioner for the period 2006-2007 vide order bearing Memo No 8/Aarop-01-245/6935 dated 16.05.2016 placed at Annexure 1 to the writ petition and feeling aggrieved, the petitioner, for the third time, is before this Court.

7 Three issues have been raised by Mr Singh, learned counsel for the petitioner to question the order of punishment, namely;

(a) The foundation for the proceeding rests on the chargesheet issued by the District Magistrate, Nalanda, a copy of which is impugned at Annexure 10 which though has been drawn by the District Magistrate as a controlling authority but has not been ratified by the State Government in terms of the provision underlying Rule 14 (3) of 'the Rules' as amended from time to time which, inter



alia, confers exclusive jurisdiction on the disciplinary authority to do the job;

(b) The allegation, even taken on its face value, does not constitute a misconduct and such is the opinion of this Court in the first round proceeding arising from CWJC No 13760 of 2012 present at Annexure 13; and

(c) Though several people were involved in publication of the result but the petitioner has been singled out and for which learned counsel has relied on a Bench decision of this Court reported in 2012 (2) PLJR 655 (Mahendra Prasad Sharma –Versus- State of Bihar & Others), more particularly paragraph 14 thereof.

8 The arguments of Mr Singh has been contested by Mr Prasad, learned Standing Counsel No VIII and who, in reference to the allegations confronting the petitioner as per the chargesheet, has submitted that considering the serious allegation levelled against the petitioner, he has been let off with a minor punishment.

9 On the directions of this Court, the records of the proceedings have been produced by Mr Prasad and, very fairly, Mr Prasad, learned Standing Counsel No VIII, while going through the records of the disciplinary proceedings, concedes that although the chargesheet was drawn by the District Magistrate and forwarded to the State Government in its Department of Personnel and



Administrative Reforms vide Annexure 10 and which letter is available at page 55 of the records but this charge memo has neither been ratified nor approved by the State Government rather the matter has proceeded therefrom.

10 I have heard learned counsel for the parties and perused the records and I am satisfied that the writ petition is fit to be allowed on all three counts. Rule 14 (3) of 'the Rules' casts an obligation on the disciplinary authority who, in the case of the petitioner, would be the State Government to draw or cause to be drawn up the substance of imputation of misconduct or misbehaviour together with definite and distinct articles of charges together with the list of documents as well as the list of witnesses through whom the article of charge is proposed to be sustained. The Rule, thus, makes it very clear that the charge memo can be drawn up by the disciplinary authority either by himself or he may cause it to be drawn up by someone else and to that extent, the drawing of the charge memo by the District Magistrate, Nalanda vide Annexure 10 in the capacity of the controlling authority would suffer with no infirmity. The infirmity begins thereafter because even though the charge memo was drawn and forwarded by the District Magistrate, Nalanda to the State Government for doing the needful in terms of the mandatory requirement of Rule 14 (3) of 'the Rules' but the onus has not been



discharged and the State Government has proceeded mechanically thereafter to continue the proceedings without bothering to satisfy itself whether or not the charge memo is in tune with the statutory requirement.

11 In a process to defend the situation, Mr Prasad, learned Standing Counsel No VIII has relied upon the judgment of the Supreme Court since reported in AIR 1998 Supreme Court 2210 (Steel Authority of India & Another –Versus- Dr R K Diwakar & Others and with particular reference to the opinion of the Supreme Court recorded at paragraphs 4 and 5 of the judgment, it is sought to be canvassed that mere drawing of the chargesheet by an authority other than the disciplinary authority, ipso facto, would not render the proceeding invalid but, in my opinion, the opinion expressed, relied upon by learned counsel stands noticed in a recent judgment of the Supreme Court rendered in the case of Union of India & Others – Versus- B V Gopinath (2014) 1 Supreme Court Cases 351 where this very issue came up for consideration in the backdrop of an identical provision underlying Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The argument, as advanced by Mr Prasad before this Court, was the argument advanced by the Additional Solicitor General before the Supreme Court as manifest from paragraphs 15 and 16 of the judgment and the Supreme



Court, taking note of the earlier judgments on the issue, has held in paragraph 52 that even though an authority lower than the disciplinary authority may have a delegated jurisdiction to draw up a charge memo but until such time that the charge memo so drawn, is approved by the disciplinary authority, it would have no legal sanctity. Meaning thereby the very foundation for the disciplinary proceeding put to question in present proceeding is illegal and void, thus, rendering the entire proceedings illegal.

12 Coming on the merits of the allegation, this Court, in the previous round of litigation arising from CWJC No 13760 of 2012 vide Annexure 13 has very clearly opined at paragraph 23 that the nature of the default complained against the petitioner was condonable lapse and such is the opinion not only of the District Magistrate as manifest from Annexure 4 but also the State Election Commission vide Annexure 14.

13 As regards the issue of being made an escape goat, it is rightly argued by Mr Singh that, although there were several others who were part of the decision making process but it is the petitioner who has been singled out probably because he was the Returning Officer. The exercise has taken its toll on the petitioner because not only, in the meanwhile, the petitioner has superannuated with effect from 31st of January 2017, the exercise has consumed 11 precious



years of the service tenure of the petitioner, depriving him of the service benefits including promotional benefits which he would have been otherwise found entitled to. Such is the unfortunate state of affairs.

14 For the reasons so discussed, the punishment order impugned at Annexure 1 is an order which is neither sustainable on merits nor is the proceeding maintainable in view of the void charge sheet and as a consequence, the entire disciplinary proceedings including the order of penalty impugned at Annexure 1, is quashed and set aside.

15 The writ petition is allowed with all consequential benefits.

16 Let the records so produced by Mr Prasad be returned to his custody.

(Jyoti Saran, J)

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