IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10559 of 2008

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Upendra Prasad, Son of Late Janak Kishore Lal, Resident of Village – Chatneshwar, Police Station – Warisnagar, District – Samastipur.

.... Petitioner

Versus

1. The State of Bihar through the Secretary Revenue and Land Reforms Department Govt. of Bihar, Patna.
2. The Divisional Commissioner-cum-Appellate Authority, Darbhanga.
3. The Collector, Darbhanga.
4. The S.D.O. Sadar, Darbhanga.
5. The Deputy Collector (Establishment) Darbhanga.
6. The Circle-Officer, Bahadurpur Anchal, Darbhanga.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajesh Singh, Advocate.
Mr. Sanjay Kumar Verma, Advocate.
Mr. Sanjay Kumar, Advocate.

For the Respondents : Mr. (SC2)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

CAV JUDGMENT

Date: 26-04-2017

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner preferred this writ petition for quashing the order dated 22.11.2006 as contained in Memo No. 2304 (Annexure-18) whereby the Collector, Darbhanga compulsory retired the petitioner from service and also forfeited his 1/3rd pension and 1/3rd gratuity. The petitioner further sought to quash the order dated 26.11.2007 passed by the Divisional Commissioner, Darbhanga, the appellate authority, in Misc. Case No. 50 of 2006 (Annexure-20) by which the appellate authority upheld the order of punishment passed by the disciplinary authority, the Collector, Darbhanga.

3. The petitioner was posted as Revenue Karamchari in Bahadurpur Anchal falling in the district of Darbhanga. Vide order dated 02.07.1999 (Annexure-1), the petitioner was asked to show cause about the issuance of fake rent receipts and fake mutation order in favour of Bharat Bhagat. The petitioner submitted his reply denying issuance of fake rent receipts and fake mutation order (Annexure-2). Many complaints were received with regard to issuance of fake rent receipts and fake order of mutation. An explanation was sought for from the petitioner. The Collector, Darbhanga after perusing the explanation of the petitioner suspended him on 18.12.1999 vide order contained under Memo No. 97110/Laheriasarai (Annexure-8). After suspension vide Letter as contained in Memo No. 159 dated 05.02.2000 प्रपत्र "क" (Form 'K') was framed (Annexure-9). The petitioner was charged on three counts:

(i) Firstly while the petitioner was posted as Revenue Karamchari in the Circle Office, Bahadurpur, the petitioner issued fake rent receipts in favour of Bharat Bhagat with regard to land of Khata No. 499, Thana No. 534, Khesra-2273, old-391, new municipal Khesra -39165, area two decimal. The order of mutation was not issued by the Circle Officer and fake correction slip was also given to Bharat Bhagat.

(ii) Secondly, the petitioner after being relieved from Circle Office, Bahadurpur on 07.06.1999 he issued unauthorisedly rent receipts without the order of mutation by the competent authority in favour of Vina Mishra, Wife of Brajnath Mishra with regard to the land of Thana No.- 490, Khata No. -250, Khesra No. 931, area 10 dhurs and also without appropriate mutation order name of Vina Mishra was mutated and entered into the Jamabandi register.

(iii) Thirdly, the petitioner without any order of mutation of Mouza Balbhadrapur, Thana No. 534, in Jamabandi No. 6091, 6102, 6103, 6104, 6105, 6108, 6112, 6113, 6116, 6117, 6118, 6119, 6120, 6130, 6131, 6134, 6135, 6136, 6137, 6138, 6139, 6141, 6142, 6144, 6145, 6153, 6154, 6155, 6158, 6161, 6170, 6172, 6173, 6177, 6178, 6179, 6180, 6181, 6182, 6184, 6187, 6197 and 6198 mutated the names and opened Jamabandi.

4. On such charges, the petitioner was asked to explain within a fortnight before the enquiry officer. Shri Devendra Prasad, the Deputy Collector, Establishment, Darbhanga was appointed as enquiry officer. The enquiry officer submitted his report on 12.07.2001 (Annexure-15). The petitioner was served second show cause notice along with the enquiry report and the disciplinary authority the Collector, Darbhanga after considering the second show cause of the petitioner ordered for compulsory retirement of the petitioner and also ordered for forfeiture of 1/3rd pension and 1/3rd gratuity.

5. The petitioner preferred appeal before the Commissioner, Darbhanga and the Commissioner, Darbhanga vide order dated 26.11.2007 dismissed the appeal of the petitioner confirming the order of the Collector, Darbhanga.

6. Mr. Rajesh Singh, learned counsel for the petitioner submits that the petitioner was put under suspension on 18.12.1999 contemplating a departmental enquiry. The charges were also framed on 05.02.2000, but no departmental proceeding was conducted in accordance with law. The department did not examine any witness. The petitioner was also not allowed to produce his evidence. During the enquiry, if no witness is examined, the charges against the employee cannot be said to have been proved. According to Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 there is a procedure for examination of witness and the presenting officer is entitled to cross-examine the witness. The presenting officer is also entitled to adduce his own evidence and in absence of examination of production of oral or documentary evidence, the charge cannot be said to have been proved. The provisions of the Indian Evidence Act do not apply in all its strictness, but the substantial principle of Evidence Act is to be observed in departmental enquiry also and this view find supports in the case of ***Union of India vs. H.C. Goel*** reported in ***AIR 1964 SC 370.*** Therefore, the order of dismissal is bad and fit to be set aside.

7. Learned counsel for the petitioner in support of his contention placed reliance upon the judgment of this Court reported in 2000(1) PLJR 116 in case of ***S.K. Verma vs. The State of Bihar & Ors.*** Learned counsel for the petitioner further assails the order of dismissal and submits that on the representation of the petitioner, the S.D.O., Sadar Darbhanga called for a report from the Deputy Collector, Establishment, Darbhanga vide Letter No. 392 dated 17.04.2000 (Annexure-13) and thereafter on the basis of which the Deputy Collector, Establishment, Darbhanga vide order dated 28.04.2000 (Annexure-14) revoke the suspension of the petitioner and at the same time it is ordered that order of payment with regard to salary of the petitioner during the suspension period shall be made after conclusion of the departmental enquiry. It is further submitted that this fact, itself, shows the innocence of the petitioner. No pecuniary loss was caused to the State exchequer and, therefore, the punishment of compulsory retirement as well as forfeiture of $1/3^{rd}$ pension and $1/3^{rd}$ gratuity is apparently disproportionate to the charge.

8. In reply learned counsel for the State submits that no procedural irregularity and illegality has been committed in the departmental proceeding. The enquiry report was served on the petitioner and after hearing the petitioner the Collector, Darbhanga passed the order. It is further submitted that when the charge was served on the petitioner he was asked to show cause and the petitioner submitted his show cause but did not complain about any non-submission of relevant papers disabling him in giving proper reply. The enquiry report was also given to the petitioner with second show cause notice and the petitioner in his reply to the second show cause has not stated that any irregularity was committed in the departmental proceeding. Therefore, the order of punishment does not require any interference.

9. Learned counsel for the State further submits that this Court should not reappraise or re-appreciate the evidence called during the enquiry nor substitute its own finding in place of the finding of the disciplinary authority, unless it is shown that the order suffers from perversity, but there is no material to show that the order is perverse and the punishment is disproportionate to the charge.

10. Having heard the submissions of learned counsel and on perusal of the records, it appears that the petitioner was put under suspension on 18.12.1999 on the allegation of issuing fake rent receipts without proper order and for issuance of fake mutation order and creating Jamabandi without proper order of the authority. The petitioner after receiving the charge submitted letter to the enquiry officer on 15.02.2000 for supply of documents. The petitioner submitted his show cause on 01.04.2000 (Annexure-11). The petitioner specifically stated in his show cause that the documents demanded by him were made available to him on 23.03.2000 and, only thereafter, he submitted his show cause. Therefore, the submission of the learned counsel for the petitioner that no relevant document was supplied to the petitioner during the course of departmental enquiry is not at all acceptable.

11. Upon submissions of the enquiry report by the enquiry officer on 20.09.2006 (Annexure-16), the Collector, Darbhanga gave second show cause along with the enquiry report to the petitioner. The petitioner submitted his show cause, but he did not state that no evidence either oral or documentary was adduced during the course of enquiry. He did not point out any illegality or irregularity in the procedure of enquiry and submitted his show cause on merit and against the finding of the enquiry officer. Upon receipt of the show cause the Collector, Darbhanga passed the order inflicting the aforesaid punishment on the petitioner and, therefore, the submissions of the learned counsel for the petitioner that no witness was examined nor any evidence was produced during course of enquiry is of no substance and not acceptable and the judgment on which the petitioner placed reliance is not at all applicable to the facts of the present case.

12. The petitioner was awarded punishment of compulsory retirement with forfeiture of 1/3rd pension and 1/3rd gratuity in view of Section 27 and 46(A) of the Bihar Pension Rules.

13. Learned counsel for the petitioner submits that forfeiture of pension and gratuity besides compulsory retirement of the petitioner is disproportionate to the charge. The petitioner, of course, issued different rent receipts without the order of mutation in favour of different persons in different mutation cases pending before the Circle Officer, but it has nowhere come that any pecuniary loss was caused to the State exchequer or the petitioner issued any fake rent receipts. Even if the charge is admitted that the petitioner issued rent receipts without appropriate mutation order but later names of land owners were mutated and Jamabandi was opened in favour of such persons. No loss was caused to the Government exchequer. Therefore, the punishment of withholding the gratuity and pension is not sustainable.

14. It would be apt to discuss Rule 27 and Rule 46A of the Bihar Pension Rules, 1950. The Rule 27 says pension includes a gratuity. Rule 46A says :

46A. A Government servant compulsorily *retired from service as a penalty may be granted by the authority, competent to impose such penalty pension at rate not less than two-thirds and not more than full invalid pension and special additional pension, if any, admissible to him on the date of compulsory retirement;*

Provided that in the case of a Government servant mentioned in rule, who has completed, before such compulsory retirement, 25 years of qualifying service or more the pension shall be not less than two thirds of the invalid pension and not more than the full retiring pension and special additional pension, if any, to which he would have been entitled, if he retired on that date.

15. A bare perusal of the provisions as contained in Rule 27 and Rule 46(A) of the Bihar Pension Rules, 1950, it appears that once a Government servant is compulsorily retired from the service, as a punishment/penalty, the competent authority may deduct his $1/3^{rd}$ of pension and gratuity but, facts of the case makes it clear that the allegation against the petitioner was that he, without taking proper order from the C.O., issued rent receipts to different land owners but, during course of enquiry, it transpired that no pecuniary loss was caused to the State exchequer. The petitioner has already been compulsorily retired from the service and, in absence of no pecuniary loss caused to the Government exchequer, the punishment of withholding admissible pension and gratuity appears to be harsh and excessive.

16. Accordingly, the order impugned in my view, on the aforesaid facts, requires fresh reconsideration with regard to forfeiture of $1/3^{rd}$ pension and $1/3^{rd}$ gratuity by the disciplinary authority.

17. In the result, the writ petition, as stated above, is partly allowed and the order impugned dated 22.11.2006 as contained in Memo No. 2304 (Annexure-18) and the appellate order dated 26.11.2007 in Misc. Case No. 50 of 2006 (Annexure-20) are quashed to the extent of imposition of deduction of $1/3^{rd}$ pension and $1/3^{rd}$ gratuity and the matter is remitted to the disciplinary authority who will pass order afresh in accordance with law within a period of three months from the date of receipt/production of a copy of this order.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	
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