

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.63 of 2017

IN

Civil Writ Jurisdiction Case No. 280 of 2016

- =====
1. The State of Bihar, through the Principal Secretary, Animal Husbandry Department, Government of Bihar, Patna.
 2. The Director, Dairy Development Directorate, Animal Husbandry Department, Government of Bihar, Patna.
 3. The Deputy Director (Head Quarter), Dairy Development Directorate, Animal Husbandry Department, Government of Bihar, Patna.
 4. The Deputy Director (Dairy), Muzaffarpur, Regional Dairy Development Office, Muzaffarpur.
 5. The District Dairy Development Officer, Directorate Government of Bihar, Patna.
 6. The District Veterinary Officer, Arwal.
 7. The Dairy Field Officer, Arwal.
 8. District Dairy Development Officer, Arwal.

.... Appellant/s

Versus

Anil Kumar, Son of Late Bhukhan Mahto, Resident of Village- Itasang, P.O.- Itasang, P.S.- Rahui, District- Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Suresh Kumar

For the Respondent/s : Mr. Ranjeet Kumar Das

Ms. Ranjeeta Singh and Mr. Kundan Kumar

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-08-2017

This is an appeal by the State of Bihar challenging an order dated 05.12.2016 passed by the learned Writ Court in CWJC No. 280 of 2016.

There being delay of 5 days in filing this appeal, I. A. No. 235 of 2017 has been filed. Keeping in view the reasons for the delay



indicated therein, the application is allowed. Delay in filing of the appeal is condoned.

Respondent Shri Anil Kumar was working in the establishment of the appellant-Dairy Development Directorate, as Dairy Field Officer and it is alleged that that he was caught red-handed accepting a bribe of Rs.10,000/- on 26.02.2015. He was arrested and Vigilance Case No. 17 of 2015 has been instituted against him and the criminal proceedings in connection with the said case are pending. However, with regard to the same incident a charge-sheet was issued to him vide Memo dated 17.03.2015 under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and the writ petition in question was filed challenging the charge-sheet issued mainly on the grounds including the right of the Department to initiate the enquiry when the criminal case was pending. It seems that during the pendency of the writ petition, by an order passed on 16.03.2016 as the services of the petitioner-respondent Anil Kumar was terminated. An appeal was filed against this termination which was dismissed by the appellate authority on 16.07.2016. The writ petition was amended and the order terminating the service and dismissal of the petitioner-respondent was also challenged.

Records indicate that the criminal case and prosecution



against the petitioner under the Prohibition of Corruption Act is pending and the departmental enquiry conducted pending finalization of the criminal case. No evidence was led, no witnesses were examined, and only on the bases of the allegation made in the F.I.R. and the report submitted by the Vigilance Authorities which formed the basis of the F.I.R. the Enquiry Officer recorded the findings of guilty and the disciplinary authority took the impugned action.

From a detailed findings recorded by the learned Writ Court, we find that only evidence which was relied upon by the Enquiry Officer for framing the charges are the communication dated 27.02.2015 issued by the District Dairy Development Officer (Urban) with regard to the incident in question and the second document is Investigation Bureau's communication dated 10.03.2015 and the F.I.R. based on which the charges are found to be proved. The learned Writ Court after examining the entire enquiry proceedings has recorded the following findings:-

“It is not in dispute that the only evidence relied upon by the Enquiry Officer to uphold the charges, is a letter dated 27.02.2015 of the District Development Officer (Urban), a copy of which is present at Page-1 of the proceedings produced by Mr. Roy and it simply informs the Director, Dairy Development Director, that the petitioner has been



arrested by the Vigilance Team. The second document discussed in the charge memo is the letter of the Investigating Bureau dated 10.3.2015, a copy of which again is present at Page-19 of the records in the disciplinary proceeding produced by Mr. Roy and which is a letter of the Superintendent of Police, Investigating Bureau, addressed to the Secretary, Animal Husbandry and Fisheries Department, Government of Bihar, Patna, informing him about institution of the vigilance case on arrest of the petitioner for allegedly receiving bribe money of Rs. 10,000/-. There are the two documents which form the basis for disciplinary proceeding. It is not disputed that apart from these documents, no evidence was led by the Presenting Officer to support the allegation. Meaning thereby there was none to prove these documents or the allegation levelled against the petitioner.

The argument of Mr. Ranjeet Kumar that no evidence was led to bring home the charges is correct because neither the complainant nor the Incharge of the Vigilance Team which arrested the petitioner nor the witnesses to the alleged recovery have been led as witness or examined by the department. The enquiry report exclusively rests on the allegation made in the vigilance F.I.R. nothing beyond.

The issue would be whether the allegation



in the F.I.R. in absence of any witnesses proving the same and in absence of any witness supporting the charge of demand of bribe money/illegal gratification by the petitioner and in absence of any witness confirming recovery, ipso facto can be sufficient to uphold charges.”

(Emphasis is ours)

After so recording the learned Writ Court placed reliance on the judgment of the Supreme Court in the case of **Roop Singh Negi vs. Punjab National Bank [(2009) 2 SCC 570]**. The observations made by the Supreme Court as detailed in the order holds that based on the F.I.R. without examining any witness the action taken is unsustainable and the learned Writ Court allowed the writ petition and in doing so we are of the considered view that the learned Writ Court has not committed any error warranting any interference in the appeal.

Furthermore, once a charge memo is issued and the allegation in the charge-sheet were that the respondent-employee had accepted illegal gratification, this allegation is required to be proved by leading cogent evidence including examining of the complainant and other witnesses in support of the allegations made. Merely bringing a copy of the F.I.R. and the report of the Investigation Bureau without examining



any witness, the material cannot be evidence, substantially enough to prove the allegation. That being so, the learned Writ Court has not committed any error in interfering into the matter.

The appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

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