IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.527 of 2016

==

Phulpari Kumari Wife of Sri Yogendra Kumar Madhup resident of Mohall - Gayatri Nagar, New Bypass Road, 70 Feet, Bishnupur Pakari, P.O. Pakari, P.S. Beaur, District - Patna

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna
2. The Special Secretary, Social Welfare Department, Government of Bihar, Patna
3. The Joint Secretary, Social Welfare Department, Government of Bihar, Patna
4. Sectional Officer - 05, Social Welfare Department, Government of Bihar, Patna

.... Respondents

==

Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr.Adv.
Mr. Ashish Giri, Adv.

For the Respondent/s : Mr. P.K. Verma, AAG-3
Mr. Ujjwal Kumar Sinha, AC to AAG-3

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 12-12-2017

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the order bearing Memo No. 5704 dated 10.12.2014 of the State Government in its Social Welfare Department, whereby the petitioner has been dismissed from service. A copy of the notification is impugned at Annexure 7 to the writ petition.

The facts of the case briefly stated is that the petitioner was appointed as a Child Development Project Officer on 29.6.2011 on which post she joined on 19.7.2011. An inspection was carried out by the petitioner on 13.10.2011 of an Anganwari Kendra situated in Chaprasi Domahalla, Gardanibagh, in the town and district of Patna noticing certain irregularities. The Anganwari Sevika was put on notice vide show cause dated 12.1.2012 seeking explanation and was ultimately removed vide order dated 29.3.2012 of the District Programme Officer. The removal, however, was set aside by the appellate authority i.e. Deputy Director, Welfare, vide order bearing Memo No. 1223 dated 5.7.2013. These proceedings have been enclosed at Annexures 8 series to the writ petition.

On the other hand, the petitioner was also served with a show cause by the Special Secretary, Social Welfare Department, vide notice dated 21.1.2013 on alleged failure to effectively supervise, monitor and run the Anganwari Centre(s). A copy of the show cause dated 21.1.2013 is at Annexure 9. The petitioner filed her reply denying the allegations on 7.2.2013 which also forms part of Annexure 9 and according to the petitioner, the matter was not pursued thereafter. It is six months later that a complaint was filed by one Jitendra Rajak before the Superintendent of Police, Vigilance Police Station, charging the petitioner of seeking illegal gratification for issuing appointment letter for the post of Anganwari Sevika to his wife, although her selection had been approved by the Aam Sabha on 24.6.2013. The complaint alleged that the petitioner demanded Rs.1,50,000/- for the purpose which was reduced to Rs.50,000/- after much persuasion. The complaint has also been endorsed by a Police Inspector in the Vigilance Investigation Bureau, namely, Baidyanath

Prasad, who confirms the demand made by the petitioner.

It is proceeding on the complaint that a Pre-tap memorandum was set up and when sum of Rs.40,000/- was alleged to be passed on to the petitioner by the complainant whereafter he signaled the Vigilance Raiding Team who apprehended the petitioner with the money lying on her chair. The allegation is that the right hand of the petitioner was dipped in the liquid which turned pink as the money was coated with chemical for the purpose by the Vigilance. The petitioner was arrested on 7.8.2013 giving rise to Vigilance P.S.Case No. 49/2013.

Alongside a disciplinary proceeding was initiated under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') with service of charge memo vide resolution bearing No. 5522 dated 12.11.2013 of the State Government in Social Welfare Department, a copy of which is at Annexures 1 series. By the said resolution the State Government while initiating the proceedings under Rule 17 of 'the Rules' appointed Sri Amar Nath Mishra, Joint Secretary, Social Welfare Department as the Conducting Officer (Enquiry Officer) and the Section Officer, Social Welfare Department as the Presenting Officer for the Department. Paragraph 3 of the resolution directs the petitioner to file her reply before the Conducting Officer within ten days of the receipt of the resolution, failing which the Conducting Officer in paragraph 4 has been asked to proceed ex-parte.

The charge memo, inter alia, alleges that the petitioner demanded illegal gratification for issuing appointment letter to the complainant's wife and proceeding on the complaint the Vigilance Department apprehended the petitioner while accepting an amount of Rs.40,000/- as illegal gratification. The charge memo relies upon the investigation report of the Vigilance Department bearing letter no. 1783 dated 29.8.2013 as well as the report of the District Magistrate bearing No. 2233 dated 29.8.2013.

The petitioner as directed, filed her defence statement on 12.3.2014. A supplementary charge memo was also served on the petitioner vide resolution bearing Memo No. 1218 dated 4.3.2014 at Annexure 3 to the writ petition, charging her with irregularities in the operation of Anganwari Centres. The supplementary charge memo at item no.2 again made reference to the vigilance case instituted against the petitioner. The Enquiry Officer submitted his report at Annexure 4 upholding the charges made in the main charge memo at Annexure 1 as well as supplementary charge at Annexure 3. The petitioner was put on second show cause notice to which she filed her reply, a copy of which is at Annexures 5 series and which is followed by the dismissal order issued vide notification bearing Memo No. 5704 dated

10.12.2014 at Annexure 7. Feeling aggrieved the petitioner is before this Court.

Mr. Ashish Giri has appeared for the petitioner while the State is represented by Mr. Ujjwal Kumar Sinha, AC to AAG-3.

Mr. Giri in reference to the objection raised by the petitioner on non-supply of documents has referred to paragraph 9 of the writ petition in which it is stated that while denying the charges, the petitioner has raised several objections in her defence statement which includes non-supply of certain relevant documents like the CFSL report on the coloured water, the arrest memo etc. and which has neither been answered in the enquiry report nor the disciplinary authority has answered the objections. It is submitted by Mr. Giri that the order of dismissal simply accepts the allegation on its face value. He submits that the disciplinary authority has not bothered to consider the following important aspects of the matter:

(a) No evidence was led on the alleged demand of illegal gratification by the petitioner.

(b) Neither the complainant nor the Inspector of the Vigilance Investigation Bureau Baidyanath Prasad, who claims to be a witness to the demand, was examined in the disciplinary proceeding.

(c) The alleged recovery of money was not from the possession of the petitioner rather was found lying on the chair.

(d) The CFSL report was never led as evidence to support that the petitioner received the money.

(e) The reply filed by the petitioner was not considered either by the Enquiry Officer or the disciplinary authority.

(f) The order of dismissal is a non-speaking order.

Learned counsel for the petitioner in support of his submission has relied upon a judgment of the Supreme Court reported in **(2011)6 SCC 376** (**Commissioner of Police, Delhi & ors. v. Jai Bhagwan**) and in reference to paragraphs 13 to 17 of the judgment he submits that it arises out of a disciplinary proceeding founded on alleged demand of illegal gratification and the Supreme Court taking note of similar circumstances, has held at paragraph 17 that in absence of definite/ clear proof supporting acceptance of illegal gratification by the delinquent, the charges would be resting on no evidence.

Mr. Giri has also relied upon a Supreme Court judgment reported in **AIR 2017 SC 3698** (**State vs. Dr. Anup Kumar Srivastava**) and in reference to paragraph 22 of the judgment he submits that a mere possession or recovery of currency notes in absence of proof on demand, would not be sufficient for establishing an offence under the Prevention of Corruption Act.

According to the learned counsel, the proof of demand of illegal gratification is a necessary pre-requisite to uphold a charge of demand of illegal gratification and a mere recovery simplicitor will not be sufficient for imposition of penalty of dismissal on the petitioner. In support of his submission that the proof of demand is an essential pre-requisite to establish a charge of bribe, learned counsel has referred to the following judgments of this Court:

(i) C.W.J.C.No. 11222/2015 (**Haldhar Prasad Chaudhary v. the State of Bihar & ors.**)

(ii) C.W.J.C.No. 1257/2013 (**Dinesh Kumar v. the State of Bihar & ors.**) and

(iii) L.P.A.No. 63/2017 (**State of Bihar & ors. v. Anil Kumar**)

Mr. Giri submits that the allegation is resting on an absurdity because the Aam Sabha was held on 24.6.2013 i.e. two months prior to the alleged complaint which was made on 12.8.2013 and when the complainant knew that his wife had not been selected for appointment and thus, there was no question of demanding illegal gratification for her appointment. He submits that the proceeding suffers from bias because even though the petitioner had been earlier put on notice on alleged irregularities in the Anganwari Centres falling under the supervisory control of the petitioner vide Annexure 9 on 21.1.2013 but after filing of her reply on 7.2.2013, the matter was not pursued. It is submitted that it is while examining the charge of bribery that the respondents have unnecessarily tried to revive a proceeding which had been closed. As regarding the evidence on record he submits that it is only the members of the raiding party who have been examined in the proceeding, none of whom are either the witness to the demand or money exchanging hands except that one Sudesh Yadav, the Police Sub Inspector of the Raiding Team, has stated that she saw the petitioner putting the money on the chair on realizing that she had been apprehended.

In reference to the report of the Enquiry Officer at Annexure 4 he has referred to the findings present at running page-110 in which the Enquiry Officer has accepted that neither the complainant had accompanied the raiding party nor her evidence has been recorded. The Enquiry Officer has further accepted that the alleged bribe money was not recovered from the possession of the petitioner rather was found lying on the chair. It is further mentioned that while the Police Inspector Amar Nath Singh admitted that he did not see the petitioner accepting money, the Sub Inspector Sudesh Yadav has stated that she saw the charged officer putting money on the chair. The Enquiry Officer further admits that the signature of the charged officer was not taken on chemical solution.

The argument of Mr. Giri has been contested by Mr. Ujjwal Kumar Sinha, who has referred to the charge memo at Annexure 1 to submit that a rather serious charge was facing the petitioner. He submits that the supplementary charge memo would confirm that even earlier the petitioner has been charged with irregular functioning of the Anganwari Centres. Learned counsel has next referred to the Pre-trap memorandum to submit that the allegation was recorded by Kanishk Kumar, Vigilance Dy.S.P., who was also a member of the raiding party as confirmed from Post-trap memorandum present at running page-94 of the proceedings. Learned counsel has referred to the enquiry report and with particular reference to the remarks of the Enquiry Officer at running page-108 he submits that the list of witness and the evidence supporting the allegation has been discussed to confirm the charges. He submits that the degree of proof to establish a charge in a departmental proceeding is vastly different than in a criminal proceeding and since in the present case the allegation was recorded by the Deputy Superintendent of Police, Kanishk Kumar, who was also a member of the raiding party and a witness to the recovery, this evidence was sufficient to uphold the charge. Learned counsel in support has relied upon a judgment of the Supreme Court reported in **(1979)3 SCC 90** (**Prakash Chand v. State (Delhi Administration**) and with reference to paragraph 6 of the judgment he submits that the evidence of a trap witness has been found to be sufficient in such circumstances and requires no corroboration.

Learned counsel while making submission on scope of judicial review in matters concerning disciplinary proceedings has made reference to a judgment of the Supreme Court reported in **(2009)8 SCC 310** (**State of U.P. & anor. v. Man Mohan Nath Sinha & anor.**) and in reference to paragraph 14 he submits that this Court would not sit in appeal over the findings of the Enquiry Officer as affirmed by the disciplinary authority so long it is supported by legal evidence and that the adequacy thereof cannot be a factor for interference. He submits that even if the complainant, his wife or the Inspector Baidyanath Prasad, who is stated to be a witness of demand made by the petitioner, were not examined in the disciplinary proceeding nor the chemical solution which had turned pink on dipping hand of the petitioner, not led as evidence, these matters are to be seen in the criminal proceeding so initiated against the petitioner but in so far as the disciplinary proceeding is concerned, the very fact that the money was found at the residence of the petitioner, this confirmed the allegation of demand of Rs.40,000/- by the petitioner.

The misconduct according to Mr. Sinha is proved and thus the order of dismissal is perfectly justified.

I have heard learned counsel for the parties and have perused the records.

The sequence of events as well as the facts accompanying the allegation stands discussed hereinabove exhaustively and does not require a reiteration. The petitioner was earlier put on notice on her efficiency vide Annexure 9 and on filing of her reply the matter was not pursued. The records reflects thus. The records also reflect that an Aam Sabha was held on 24.6.2013 for appointment of Anganwari Sevika in which the wife of the complainant was an applicant and according to the petitioner, the complainant's wife Suman Kumari did not qualify for appointment. This happened on 24.6.2013. It is two months later that Jitendra Rajak, the husband of the applicant Suman Kumari, filed a complaint on 12.8.2013 charging the petitioner of demanding bribe for appointment of his wife and according to the complaint, although a demand of Rs.1,50,000/- was made but which was reduced to Rs.50,000/- of which Rs.40,000/- was the amount which was recovered. The complainant is not the applicant rather it is her husband. The Inspector of Vigilance, namely, Baidyanath Prasad has endorsed the allegation of demand and which led to preparation of Pre-trap memorandum. These documents are present at Page-85 and

87 respectively. The Post-trap memorandum is at page-94 and confirms a recovery of Rs.40,000/- from a chair at the residence of the petitioner. It also confirms that the hand of the petitioner was dipped in chemical solution which turned pink and confirmed that she received the bribe amount. This recovery led to institution of the vigilance case bearing No. 49/2013 under the provisions of the Prevention of Corruption Act as also a disciplinary proceeding was initiated vide Annexure 1 which has culminated in the enquiry report at Annexure 4 and an order of penalty at Annexure 7.

The records thus do confirm that the allegation is by a person who was not an applicant for the post of Anganwari Sevika but who has alleged demand of illegal gratification by the petitioner followed by recovery of money. Importantly in the whole transaction, the applicant Suman Kumari has not come forward to depose in support of the complaint. In fact she is not even the complainant. On the other hand, the Inspector Baidyanath Prasad, who claimed to be a witness to the alleged demand made by the petitioner, has also not come forward to depose nor did the Presenting Officer has bothered to examine him on his statement in the proceedings. It is again a matter of record that the bribe amount received by the petitioner was neither examined as evidence nor the CFSL report was led as evidence. The enquiry report at running page-110 very clearly accepts that the applicant Suman Kumari neither accompanied the raiding party nor was her evidence recorded. It further admits that the alleged bribe amount was found on a chair kept in the verandah of the residence of the petitioner and was not recovered from her personal possession. The members of the raiding party, namely, Constable Santosh Kumar and the Inspector Amar Nath Singh admit that they have not seen the petitioner accepting bribe amount while the Inspector Sudesh Yadav stated that she saw the charged officer keeping money on the chair. Similar is the statement of one Constable Rasid Imam. There are thus witness to the petitioner keeping the money on the chair but none has deposed in favour of demand. It is also admitted by the Enquiry Officer that neither the signature of the petitioner was taken on the solution which is stated to have turned pink when the hand of the petitioner was dipped into it nor the CFSL report was examined in evidence.

While it is the argument of Mr. Giri that in the circumstances discussed, the allegation is bald and is resting on no evidence and that mere recovery of an amount from the residence of the petitioner ipso facto would not confirm a misconduct unless there is evidence of demand, on the other hand, Mr. Sinha, learned AC to AAG-3, has very passionately argued that the evidence of the members of the raiding party including the Deputy Superintendent of Police, Kanishk

Kumar on recovery of the amount from the residence of the petitioner supported the allegation in the complaint and is by itself sufficient to uphold the charge.

There is a supplementary charge as well vide Annexure 3 and which enlarges the scope of the proceeding while commenting upon the efficiency of the petitioner as a Child Development Project Officer on her failed supervisory control on Anganwari Centres running under her jurisdiction.

In so far as the supplementary charge at item 1 is concerned, an unnecessary attempt has been made by the department to enlarge the scope of the proceeding because neither an issue of efficiency simplicitor nor a bald charge of irregularity in discharge can be a subject matter of the disciplinary proceeding unless the alleged inefficiency is proved disastrous or the irregularity in discharge comments on the integrity of a delinquent. In other words unless an action of a delinquent is clothed with ill motivated designs an allegation of inefficiency ipso facto cannot be a subject matter of misconduct to invite the disciplinary proceeding. Such is the opinion of the Supreme Court expressed in the case of **Union of India & ors. v. J.Ahmed**, reported in **(1979) 2 SCC 286**, and which opinion has continued to govern the issue and followed in the subsequent judgments.

In so far as the second charge in the supplementary charge memo at Annexure 3 is concerned, a registration of the F.I.R. on the allegation which forms part of the main charge memo at Annexure 1, does not constitute a separate charge for inviting supplementary charge memo, which in my opinion is an unwarranted action because the criminal case so instituted yet remains pending for adjudication before the court of competent criminal jurisdiction.

The issue which requires consideration for the present is whether the allegation in the complaint at page-85 is supported by evidence or is a motivated action by the husband of one of the applicant on her failure to secure an appointment.

The judgment of this Court rendered in the case of **Haldhar Prasad Chaudhary** (supra) relied upon by Mr. Giri arises from a similar allegation where a recovery of Rs.500/- was made from the Peon, stated to be a part of the bribe amount given by the complainant to the accused Upper Division Clerk. This Court while examining the issue of relevance of demand in an allegation accompanying recovery of illegal gratification, has referred to the opinion of the Supreme Court on similar matters to record as follows:

> " In my opinion in the circumstances discussed above, the alleged act whatsoever complained against the petitioner, of accepting money from Indrashan Prasad Singh, neither constitutes misconduct nor provides any

foundation for a disciplinary proceedings. Reference in this regard is made to paragraph 47 of the judgment reported in (2015)3 SCC 220 (Vinod Kumar vs. State of Punjab) which runs as follows:-

> "There can be no quarrel over the proposition that on the basis of mere recovery an accused cannot be found guilty. It is the settled principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as bribe. In the absence of any evidence of demand and acceptance of the amount as illegal gratification, recovery could not alone be a ground to convict the accused. This has been so held in **T.Subramanian v. State of T.N. (2006)1 SCC 401, Madhukar Bhaskarrao Joshi v. State of Maharashtra (2000) 8 SCC 571, Raj Rajendra Singh Seth v. State of Jharkhand (2008) 11 SCC 681, State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede (2009) 15 SCC 200, C.M.Girish Babu v. CBI (2009) 3 SCC 779, K.S. Panduranga v. State of Karnataka (2013) 3 SCC 721 and Satvir Singh v. State of Delhi (2014) 13 SCC 143**."

The opinion expressed by the Supreme Court is reiterated in the following judgments:

(a) (2015)7 SCC (State of Andhra Pradesh vs. P. Venkateshwarlu) para-11

(b) **(2015) 10 SCC 230 (Sevlara vs. State of Karnataka) para-18 and 19"**

Similar was the position in the case of **Dinesh Kumar and Anil Kumar** (supra) where no supportive evidence was led on the charge.

The judgment of the Supreme Court relied upon by Mr. Giri rendered in the case of **Jai Bhagwan** (supra) is in similar circumstances. In the said case the respondent Jai Bhagwan was charged of extorting Rs.100/- by way of illegal gratification during the course of security check from one Mrs. Ranjana Kapoor, who made complaint to one S.P.Narang, Operations Officer of Air France and whereafter it is alleged that the sole respondent returned the sum of Rs.100/- to the complainant in presence of an Inspector O.P.Yadav and Sub Inspector Arun Singh. Although the Central Administrative Tribunal upheld the penalty but the order was set aside by Delhi High Court and was appealed against by the Department through the Commissioner of Police before the Supreme Court. Paragraphs 13 and 17 of the judgment somewhat reflects a similar situation as present in this case, inasmuch as though there were two witnesses who deposed on return of Rs.100/- by the charged Constable to the complainant but since they were not a witness to a demand, the matter went in favour of the charged Constable. Paragraphs 13 and 17 of the judgment runs under:

> "13. O.P.Yadav, Inspector and Arjun Singh, SI, during the departmental enquiry proceedings have only deposed that Rs.100/- was returned by the respondent to the complainant. During the course of enquiry proceedings no witness was examined on behalf of the appellants to prove and establish by tendering any direct, cogent and reliable evidence that the aforesaid amount of Rs.100/- was received by the respondent by way of illegal gratification from anyone.
>
> 17. In the absence of such a definite/ clear proof supporting the case of the appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant. Therefore, as rightly held by the High Court the present case is a case of no evidence."

It is unexplained as to why the complaint was filed not by the applicant to the post of Anganwari Sevika but her husband and that also two months after the Aam Sabha has rejected her candidature. It is also not explained why neither the applicant Suman Kumari nor her complainant husband Jitendra Rajak were examined during the disciplinary proceeding in support of demand of illegal gratification. It is again not explained why the Presenting Officer did not chose to examine the Inspector Baidyanath Prasad who has claimed to be a witness to the alleged demand made by the petitioner. There is again no explanation as to why the signature of the petitioner was not taken on the bottle containing the chemical solution which had allegedly turned pink on dipping of the fingers of the petitioner after she allegedly accepted the bribe money. Lastly there is no explanation why the CFSL report on the chemical solution was not led as evidence.

The petitioner at paragraphs 48 to 57 of her reply has denied the allegation of demand of illegal gratification and has also pointed out the flaws in the Post-trap memorandum which forms the basis for the proceeding and even though to some extent the Enquiry Officer has accepted the position, yet he has proceeded to uphold the charge and the disciplinary authority has mechanically proceeded to impose a penalty of dismissal without bothering to examine whether there was any piece of evidence on demand and without dealing with the objection raised by the petitioner in her reply.

Despite the law being settled under plethora of judgments as to the manner of discharge by an authority exercising quasi judicial function, more particularly where it visits the delinquent with severe penal consequences, yet the State in its whims does not think it necessary to abide by the directions. The order of dismissal is an apology for an order passed by the quasi judicial authority for it simply proceeds to uphold the allegations without bothering to satisfy whether any evidence exists to connect the charge and without dealing with even a single objection raised by the petitioner to draw the conclusion. As to what is the manner of discharge expected of an authority exercising quasi judicial function, the Supreme Court in a judgment reported in (2010)9 SCC 496 (**Kranti Associates Private Limited & anor. V. Masood Ahmed Khan & ors.**) after examining threadbare the earlier opinions at paragraphs 12 to 46 has summarized the issue in the following words:

> "47. Summarising the above discussion, this Court holds:
>
> (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (b) A quasi-judicial authority must record reasons in support of its conclusions.
>
> (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
>
> (f) Reasons have virtually become as indispensable a component of a decision- making process as observing principles of natural justice by judicial,

quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers.

Transparency in decision-making not only makes the judges and decision-making less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor. (1987) 100 Harvard Law Review 731-32)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain, (1994) 19 EHRR 553) EHRR, at 562 para 29 and Anya v. University of Oxford, (2001 EWCA Civ 405(CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"Adequate and intelligent reasons must be given for judicial decisions."

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a art of "due process"."

Mr. Sinha did make a very brilliant attempt to establish the charge but except taking this Court through the evidence of the raiding party, who at best are witness to the petitioner putting the money on the chair but are not the witness on alleged demand made by the petitioner, no tangible evidence on demand could be shown.

A public servant faces high risk of being entrapped in false cases and when I observe thus I am conscious of the genuine offenders drawn in the net. But then there are cases of dissatisfied and disgruntled people with malicious intent to frame public servants in false cases, not being satisfied by their decisions.

Instances of trap cases of accused receiving illegal gratification openly without camouflage are class apart from those where it is packed in envelop or is camouflaged otherwise. The reason is that public servant cannot refuse to receive any document/ envelop handed over to him/ her and it is only when he/ she opens the envelop containing the alleged document that the truth is unveiled but by that time it is too late because the Vigilance waiting at the wings pounces and dips his/ her hand in the solution ready for the purpose and obviously since the public servant on duty has touched the document, the solution turns pink. There thus can be possible situations where an unsuspecting public servant is drawn in a net schemingly.

This is a very serious matter and the State as well as the Vigilance need to address themselves on such possible situations before they routinely arrest a public servant for such kind of imputations.

As I have said people with motivated actions and malicious intent are bound to use such situation and the situation in hand cannot be called any different because in the present case even though the wife of the complainant had lost her challenge to the post of Anganwari Sevika two months prior to the filing of the complaint, yet her husband pursued the matter with clear object. In my opinion, once the proceeding was over, there was no occasion either for the petitioner or the applicant to pursue the matter except where it was backed with evil designs.

It is again hard to believe that the alleged transaction was taking place in the Verandah of the petitioner for everyone to see. The only evidence on record are the members of the raiding party who saw the petitioner putting the money on the chair but are not witness either to demand or receiving. The law on the issue is well settled and the judgments relied upon by Mr. Giri are amongst them. In my opinion until such time that demand for illegal gratification is proved which is followed by exchange of money, a recovery simplicitor can never be a basis for a disciplinary proceeding. Unfortunately even though the Enquiry Officer has taken notice of these relevant circumstances but as I have observed the discharge of obligation by the State as the disciplinary authority is an apology for it assigns no reasons to uphold the alleged charge.

For the reasons discussed, the order of penalty of dismissal can neither be upheld on merits or on the procedure followed and as a consequence the order bearing Memo No. 5704 dated 10.12.2014 of the State Government in its Social Welfare Department, impugned at Annexure 7 to the writ petition, is quashed and set aside. The petitioner is restored to her post with all consequential benefits including arrears of salary which should be provided to her within three months of the date of receipt/ production of a copy of this order.

The writ petition is allowed.

Let the records of the disciplinary proceeding be returned to Mr. Ujjwal Kumar Sinha, AC to AAG-3.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.01.2018
Transmission Date	NA