

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17227 of 2008

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Upendra Pandit, Son of Late Gonal Pandit, Resident of Village – Shahpur, P.S. – Nabhatta in the district of Saharsa.

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar.
2. The Commissioner, Munger Division, Munger.
3. The District Magistrate, Begusarai.
4. The Civil S.D.O. Bakhari in the District of Begusarai.
5. The Enquiry Officer-cum-District Panchayat Raj Officer, Begusarai.
6. The Circle Officer, Garhpura Circle, District- Begusarai.

.... Respondents

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Appearance :

For the Petitioner : Mr. Vinay Ranjan, Advocate.

For the Respondents : Mr. Ram Vinay Pd. Singh, AC to GA XII.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 15-02-2017

Heard Mr. Binay Ranjan, learned counsel appearing on behalf of the petitioner and Mr. Ram Binay Pd. Singh AC to GA 12.

2. The petitioner by filing this writ petition seeks quashing of the order as contained in Memo No. 1064 dated 30.04.2008 as contained in Annexure-10 by which the order of the Collector as contained in Memo No. 1822 dated 29th December, 2005 as contained in Annexure-9 was confirmed. The petitioner further prays to quash the order as contained in Memo No. 1822 dated 29th December, 2005 Annexure-9 by which the service of the petitioner have been terminated.

3. The petitioner was appointed as clerk by the Director



Chakbandi/Consolidation Department dated 11th January 1988. After 10 years of service the services of the petitioner were absorbed in the Revenue Department on 01.01.1998 and he was posted as Revenue Karmchari at Circle Office, Bakhari, Begusarai. The petitioner was transferred to Garhpura Circle and posted as Halka Karmchari in Sonwa Panchayat as Revenue Karmchari. The Circle Officer informed the petitioner on 28th June, 2004 that Sub-Divisional Officer, Bakhri was to inspect Halka No. 4 of Garhpura Circle on 3rd July, 2004 and directed him to inform the persons who had already applied for mutation.

4. On 3rd July, 2004 the Sub-Divisional Officer, Bakhri inspected the office of the petitioner and after 6 days vide Letter No. 1009 dated 9th July, 2004 asked the petitioner to show cause on certain allegations. The petitioner filed his reply, but the authority finding the reply of the petitioner unsatisfactory put him under suspension vide Memo No. 995 dated 14.07.2004 and his headquarter was fixed in the Circle office, Begusarai. A departmental proceeding vide Memo No. 997 dated 14.07.2004 was initiated and the District Panchayat Raj Officer, Begusarai was appointed as enquiry officer.

5. The petitioner filed his show cause on 7th December, 2004 and on 14.12.2004 before the enquiry officer. The enquiry officer after holding the enquiry submitted reports. The second show



cause notice was given to the petitioner vide Memo No. 1159 dated 16.12.2005 issued under the signature of District Magistrate, Begusarai. The petitioner again gave his reply on 21.12.2005, but the District Magistrate, Begusarai vide his order as contained in Memo No. 1822 dated 29th December, 2005 dismissed the petitioner from service. The petitioner preferred Appeal No. 3-4 of 06 on 21.02.2006 before the Commissioner, Munger Division and the same was also dismissed.

6. Learned counsel for the petitioner assailed the order of his termination and confirmation in appeal on the ground that no departmental proceeding as envisaged under Rule 17 of Bihar of the Bihar Civil Services (Classification, Control and Appeal) Rules, 2005 was held. No documents were given to the petitioner, nor any witnesses were examined in presence of the petitioner and the petitioner was not allowed to cross-examine as also no list of the witnesses was given to the petitioner.

It is further submitted that the petitioner was appointed by the Director, Consolidation Bihar in the year 1988 and, therefore, the order of termination issued by the Collector, Begusarai is illegal as he was not the appointing authority of the petitioner. It is further submitted that the presenting officer was not appointed and, therefore, the departmental proceeding is vitiated.



7. Per contra, learned counsel for the State submitted that there is no illegality in holding the departmental enquiry nor the petitioner ever raised any objection before the authority about non-supply of any documents or the list of the witnesses.

8. On the basis of the submissions of the parties, the first question arises for consideration as to whether the departmental enquiry was held in accordance with law?

9. On the submissions of the learned counsel for the petitioner that the departmental proceeding was not held in accordance with law, the record of the departmental proceeding was called for, for perusal. It appears from perusal of the records that firstly the petitioner was put under suspension and a departmental proceeding was initiated. The District Panchayat Raj Officer, Begusarai was appointed as enquiry officer. The petitioner was asked to show cause vide order as contained in Memo No. 887 dated 14.07.2004. The District Panchayat Raj Officer, Begusarai also issued notice to the petitioner to file his show cause till 15.12.2004. The memo of charges was also handed over to the petitioner. The petitioner gave his reply on 7th December, 2004 and on 14.12.2004. From the reply filed by the petitioner, it appears that the petitioner did not raise any objection with regard to non-submission of any documents or the list of the witnesses to be examined during course of



departmental enquiry. From the records of the departmental enquiry it appears that the petitioner did not appear on 15.12.2004 and on other date fixed in the departmental proceeding, but no step was taken in the departmental proceeding in absence of the petitioner. From the order sheet, it appears that on 16.08.2005 the enquiry officer asked the petitioner to appear in Circle Office, Garhpura so that the witnesses named in the memo of list were examined. The next date was 19.08.2005. On 19.08.2005 the petitioner appeared before the enquiry officer in Circle Office, Garhpura and in his presence 14 witnesses were examined, but the petitioner did not cross-examine any of the witness and he put his signature in the margin of the deposition of the witnesses. On 19.11.2005, the petitioner filed a petition to conclude the departmental proceeding as soon as possible as he got nothing to say.

9. Therefore, the submission of learned counsel for the petitioner that no documents or list of witnesses were served on the petitioner is of no substance and not acceptable. The petitioner was knowing fully well that 15.12.2004 was the date fixed for the departmental enquiry on which he has to submit the show cause. The petitioner filed his show cause on 07.12.2004 and 14.12.2004 but he did not raise any objection. The petitioner participated in the departmental proceeding on the date on which 14 witnesses were



examined, but he did not cross-examine any witnesses but he put his signature stating he would cross-examine the witness. Therefore, I do not find any force in the submissions of learned counsel for the petitioner that the departmental proceeding was not held in accordance with law.

10. The second contention for consideration is that the petitioner was appointed by the Director, Consolidation in the year 1988 and his service was regularized in the year 1998 by the Land Reforms and Revenue Department and he was transferred in the Circle Office, Garhpura, Begusarai in Halka No. 4. It is further submitted that District Magistrate is not the appointing authority of the petitioner therefore, the District Magistrate is not competent to pass order of termination against the petitioner, but I do not find any force in the submission on the simple ground that the petitioner was temporarily appointed by the Director, Consolidation to work as Amin in the consolidation office, but later on he was regularized in the service by the department of Land and Revenue and he was transferred to the district of Begusarai and posted in circle falling in the district of Begusarai to work as Halka Karmchari/Revenue Clerk. Therefore, for all practical purposes the District Magistrate is the disciplinary authority as well as appointing authority and he is very much competent to issue the order of termination of the petitioner.



12. Having considered the discussions made above, I find no merit in this writ petition. Accordingly, the writ petition is dismissed.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

