

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4701 of 2014

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1. Shailesh Kumar Ojha S/O Sri Parmanand Ojha R/O : - Village - Kumhailla, P.S.
- Ishwapur District - Saran at Chapra

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Revenue and Land Reforms, Govt. Of Bihar, At Old Secretariat, P.S. - Secretariat, District - Patna
3. The Commissioner, Purnea Division, Purnea
4. The Collector, Kishanganj

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Uma Shankar Prasad, Sr. advocate
Dr. Anshuman, advocate
Mr. Kamla Kant Tiwary, advocate
Mr. Kuber Pathak, advocate
For the Respondent/s : Mr. Mahendra Verma, AC to SC 20

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 09-10-2017

Heard Sri Uma Shankar Prasad, the learned senior counsel for the petitioner, and Sri Mahendra Prasad Verma, the learned AC to SC 20.

2. With the consent of the parties, this writ petition is disposed of at the stage of admission itself.

3. The petitioner seeks quashing of the order, as contained in memo No. 315, dated 21.03.2013 (Annexure-16), communicated to the petitioner vide letter No. 338 dated 01.04.2013, and the letter, as contained in memo No. 456, dated 12.04.2013 (Annexure-17) by which the petitioner has been dismissed from



service.

4. The brief facts is that petitioner was posted as Circle Inspector in the circle office, Pothia, Kishanganj. The collector, Kishanganj received several applications for settlement of land for cultivation of tea garden, in view of policy decision of the State Government, and in pursuance of which letter No. 1697 dated 22.11.1995 was issued by the Special Secretary, Land & Revenue Department, Government of Bihar, Patna. On the basis of aforesaid letter, the Collector authorized the empowered committee to settle the land on lease to the entrepreneurs. The Collector, upon receipt of the applications from different entrepreneurs, sent the same to the Additional Collector for report and recommendation. The Additional Collector sent the applications to the DCLR and the DCLR sent the same to Circle Officer of concerned Anchal and directed the Circle Inspector and Halka Karmchari to report and recommend whether the lands are fit for cultivation of tea garden and can be settled under the Industrial Policy of the Government of Bihar. The Halka Karmchari reported that the land is free from any encumbrances. The land is Gairmazarua Aam Bihar Sarkar and fit for tea garden cultivation. The petitioner being the Circle Inspector of Pothia also inspected the land and reported about the nature of land and also reported that the land is fit for tea garden cultivation. The Circle Officer, on the basis of report



of the Halka Karmchari and the Circle Inspector, the petitioner, reported the matter vide Annexure-2 & 3 series that the land is fit for cultivation of tea garden and can be settled in favour of the applicants. The Collector, on the advice of empowered committee, settled the land in favour of different entrepreneurs but thereafter the petitioner was served with memo of charge containing three charges. The petitioner was charged that he being Circle Inspector, Pothia recommended for settlement of Government land on lease on temporary basis in pursuance of letter No. 1697 dated 22.11.1995 for which he was not competent. Secondly, the petitioner was charged that he recommended for lease, in pursuance of letter No. 1697 dated 22.11.1995, of five acres of land in favour of a person whereas the aforesaid letter speaks about lease of only 0.75 acre of land. Thirdly, the petitioner was charged that he recommended for lease in favour of different persons of the same family in order to give them undue favour.

5. The petitioner filed his show cause before the Commissioner, Purnea division. The Commissioner submitted his report and on such the petitioner was dismissed from service. It appears that petitioner filed CWJC No. 9603 of 2010 and this court vide order dated 21.04.2011 set aside the order of dismissal on the ground that no show cause notice was served upon the petitioner by



the disciplinary authority along with the enquiry report and the matter was remitted to the disciplinary authority. Thereafter, the disciplinary authority asked second show cause from the petitioner and after considering the show cause the Principal Secretary, vide order dated 21.03.2013, as contained in memo No. 315, (Annexure-16) dismissed the petitioner from service.

6. The learned senior counsel for the petitioner submits that on wrong interpretation of letter of Department of Revenue & Land Reforms No. 1697 dated 22.11.1995 (Annexure-2) departmental proceeding was initiated against the petitioner and other officials. It is submitted that the department itself issued the letter empowering the Collector to settle the Gairmazarua Aam land of Bihar Sarkar in favour of different persons for cultivation of tea garden and initiation of settlement of land was taken at the level of the Collector. The Collector received the applications for settlement of the land for tea garden cultivation and thereafter the Collector sent all the applications to the Additional Collector. The Additional Collector sent the applications to the S.D.O. and DCLR and DCLR sent the same to the Circle Officer. The Circle Officer, Pothia, called upon report from the Halka Karmchari and Circle Inspector, the petitioner, and the petitioner reported that the land is fit for tea garden cultivation and can be settled in favour of a person for cultivation of tea. Thereafter,



the Circle Officer, the DCLR, the S.D.O. and the Additional Collector also made recommendation and on such the lands were settled in favour of different persons but the departmental proceeding was initiated against the petitioner that the petitioner illegally made recommendation for settlement of the land but it is not stated that which provision of law has been violated. The petitioner only reported and recommended in pursuance of the order of the Collector and other higher officials including the Circle Officer of the Anchal. Even the Commissioner vide Annexure-21 found that from the sequence of events it would appear that informally the Collector had decided to settle the land to different persons and to give legality the report was called from the Circle Officer, who reported the matter after obtaining report from the Circle Inspector and Halka Karmchari.

7. The learned senior counsel for the petitioner further submits that on same and similar charge Dr. Fateh Faiyaz, the Circle Officer, Pothia was departmentally proceeded and following punishments were imposed upon him:-

- (a) "Censure for the year 1999-2000
- (b) Reduction to five lower stages in the time scale of pay for a period of three years with cumulative effect; and
- (c) The petitioner would not earn any increment of pay during the period of such reduction and on expiry he would be entitled to the future increments"



8. Dr. Fateh Faiyaz, the then C.O., filed CWJC No. 15658 of 2016 and this court vide order dated 25.07.2017 set aside the order of punishment, besides other grounds, on the ground of action being selective and discriminative. It is further submitted that from the order, as contained in Annexure-16, it would appear that the disciplinary authority has wrongly come to a finding that Gairmazarua Aam land (land of the community) was settled in favour of different persons. It is further submitted that from perusal of Praptra Ka, it would appear that barren land in possession of Government of Bihar was settled in favour of different persons by the Collector and not Gairmazarua Aam land, which was in use of the community people. Therefore, the finding of the disciplinary authority that the Collector had no power to settle the Gairmazarua Aam land (land of the community) is erroneous. No charge was framed against the petitioner for recommending the settlement of Gairmazarua Aam land (land of community). Therefore, the finding itself is on nonest ground. It is further submitted that petitioner simply reported, as desired by the higher officials, and the decision was taken by the Collector and the empowered committee but against them no action has yet been taken and disciplinary proceeding was initiated only against the petitioner and other officials of lower rank such as C.O. and Halka Karmchari. The disciplinary authority only inflicted punishment of stoppage of



increments against Circle Officer, Dr. Fateh Faiyaz, whereas petitioner has been dismissed from service. Therefore, the action is selective and discriminative in nature and is fit to be set aside.

9. On the contrary, the learned counsel for the State contended that petitioner illegally recommended for temporary lease of the land for cultivation of tea garden although according to Government circular the petitioner was not authorized to make recommendation for such lease. The Government took action against all the officials involved in illegal settlement of land on temporary lease and the punishment does not require any interference.

10. I have heard both sides and, on perusal of the records, I find that charges were framed against the petitioner that the petitioner without the authority reported and recommended for temporary lease of land in favour of different persons and in favour of different persons of one family on otherwise consideration. It is evident from the facts of the case that applications for temporary lease of the land were not received by the petitioner or the Circle Officer. All the applications for temporary lease of land for cultivation of tea garden were received in the office of Collector, Kishanganj and the Collector, Kishanganj asked the Additional Collector to verify and report with recommendation for temporary lease. Similarly, the Additional Collector sent down all the applications for needful, report and



recommendation to the S.D.O., D.C.L.R. and Circle Officer. The petitioner, at the relevant time, was posted as Circle Inspector, Pothia. The Circle Officer also asked for report with regard to nature of land and recommendation as to whether the land is fit for tea garden cultivation. The petitioner, being the Circle Inspector, after recommendation of Halka Karmchari, inspected the land and found the land free from any encumbrances and recommended that the land is fit for cultivation of tea garden and on the report of petitioner and Halka Karmchari the Circle Officer also recommended the applications with same notes and thereafter the other officers also endorsed the same. The Collector in consultation with the empowered committee settled the lands on temporary lease in favour of different persons but from the records it appears that only the officers at the lower level were proceeded and no action was taken against the higher officials such as D.M., Additional Collector, S.D.M. and D.C.L.R., who asked the petitioner and other officers to report and recommend. Therefore, it is a best example where officers at the bottom of hierarchy are made scapegoat for illegal acts done by the higher officers. It is further evident that petitioner gave his detailed show cause that he did not act against any law and in pursuance of the order of Circle Officer, who asked him to report about the nature of land, in pursuance of the letter No. 1697 dated 22.11.1995, the petitioner



accordingly reported as desired by his higher officials but the disciplinary authority held that the petitioner made recommendation for settlement of Gairmazarua Aam land in possession of common man although settlement was made with regard to Gairmazarua Aam land, Bihar Sarkar. The Circle Officer, Pothia was punished with Censure for the year 1999-2000, reduction of five lower stages in the time scale of pay and he would not earn any increment of pay during the period of such reduction but the disciplinary authority dismissed the petitioner from service without any justification. Therefore, I find that the order is bad and illegal on account of being selective, discriminatory and without taking into account the show cause of the petitioner.

11. Accordingly, the order, as contained in memo No. 315 dated 21.03.2013, communicated through letter No. 338 dated 17.04.2013, (Annexure-16) and the order, as contained in memo No. 456, dated 12.04.2013 (Annexure-17) are set aside. This writ petition is allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.10.2017
Transmission Date	N.A.

