

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11598 of 2014

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1. Dr. Yogendra Prasad Yadav Son of Ram Bahadur Yadav Resident of Village - Phulparas, P.S. - Phulparas, District - Madhubani, at present resident of Bihar Talkies Road, Line Bazar, Purnea, P.S. - K. Hat, Purnea, District - Purnea.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
2. Principal Secretary, Health Department, Government of Bihar, New Secretariat, Patna.
3. Additional Secretary Health Department, Government of Bihar, New Secretariat, Patna.
4. Deputy Secretary to the Government, Health Department, New Secretariat, Government of Bihar, Patna.
5. Under Secretary, Health Department, New Secretariat, Government of Bihar, Patna-cum-Enquiry Officer.
6. Deputy Director Health Service (Goods), Health Department, Patna.
7. Secretary, Bihar Public Service Commission.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P. K. Shahi, Sr. advocate
Mr. Sanjeet Kumar
For the Respondent/s : Mr. Sushil Kumar, GP 22

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

13 03-04-2018 Heard P. K. Shahi, the learned senior counsel for the petitioner duly assisted by Sri Sanjeet Kumar, and Mr. Sushil Kumar, the learned GP 22.

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

The petitioner seeks quashing of the order dated 25.02.2013 issued by the Principal Secretary, Health Department, Government of Bihar (Annexure-1) whereby the appeal of petitioner against the order of dismissal has been dismissed. The petitioner further seeks quashing of the order dated 29.05.2012



(Annexure-2) issued under the signature of Additional Secretary, Health Department, Government of Bihar whereby the petitioner has been dismissed from service.

Admittedly the petitioner was posted as Incharge Medical Officer, Leprosy Control Unit, Purnea in between 1990-1997. The petitioner has been charged for involvement in irregular purchase of medicine from MSD Calcutta worth Rs. 4,21,835/- in violation of circular as contained in letter No. 176(10) dated 27.01.1982 and a departmental proceeding was initiated. The petitioner filed his show cause. The conducting officer on the basis of charges and show cause of the petitioner submitted his enquiry report. The enquiry officer has stated in his finding that the petitioner/ delinquent may not have misappropriated any amount but he placed the order for purchase of medicines to MSD Calcutta in violation and contravention of department's letter No. 176(10) dated 27.01.1982. The order for receiving medicines may have been placed in good faith but he is guilty of placing the order for purchase of medicine in contravention of the circular of the department.

The learned counsel for the petitioner submits that besides other grounds the order of dismissal passed by the disciplinary authority is illegal on the ground that conducting officer submitted his enquiry report without holding any departmental enquiry in accordance with law. The enquiry officer himself recorded the finding that too only on the basis of show cause of the petitioner. During the pendency of departmental proceeding, the conducting officer neither examined any witness nor asked the presenting officer to examine any witness or produce documentary evidence in order to prove the charges. The



petitioner was not even provided opportunity to either cross-examine the witnesses or controvert any document. The enquiry officer did not examine any witness and submitted his enquiry report. Therefore, the enquiry report itself is based on no evidence and on the basis of such enquiry report the order of the disciplinary authority, inflicting punishment of dismissal from service, is illegal and not sustainable. It is further submitted that from perusal of the second show cause, it would appear that the disciplinary authority has made up his mind to dismiss the petitioner from service before considering his reply. It is further submitted that the appellate authority also did not look into the matter that the finding of the enquiry officer is based on no evidence and the punishment of dismissal from service is illegal and dismissed the appeal.

The learned counsel for the State, however, submitted that from the show cause of the petitioner, it would appear that petitioner has admitted about the placing of order for purchase of medicines from MSD Calcutta but when his attention was drawn and he was requested to look into the records, called for, as to whether the departmental proceeding was held in accordance with law and the conducting officer allowed the presenting officer or the department to adduce any evidence, either oral or documentary, in order to prove the charge against the petitioner, he submitted that the conducting officer did not examine any witness nor any document was produced .

It is well settled that the departmental proceeding initiates with the resolution of holding departmental enquiry, submission of memo of charge and list of documents including the statement of witnesses on the basis of which the department



proposes to prove the charge. The delinquent is called upon to show cause. After submission of show cause, the conducting officer is required to fix the date of departmental proceeding and ask the presenting officer to adduce evidence by examining the witnesses and producing documents. After conclusion of evidence of the department, the conducting officer shall give opportunity to the delinquent to cross-examine the witnesses and confront the documents. Thereafter, the conducting officer shall provide opportunity to the delinquent to adduce evidence in support of his own case and thereafter after hearing both sides the conducting officer shall submit report. Even in Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 under Rule 17 every minutes with regard to holding departmental enquiry is enumerated but from perusal of the record, it appears that the conducting officer has not conducted the enquiry in accordance with the procedure laid down under the Rules and Act meant for holding departmental enquiry. Any deviation and violation from the established procedure meant for departmental enquiry amounts to non-providing of sufficient opportunity to the delinquent to defend his case. It appears from perusal of the enquiry report and enquiry records that no evidence was adduced and enquiry report is based on the opinion of conducting officer. Therefore, punishment of dismissal from service against the petitioner by the disciplinary authority, on such enquiry report, is not sustainable and illegal. The appellate order also suffers from same vice and is not sustainable.

In the result this writ petition is allowed and the orders dated 25.02.2013 (Annexure-1) and 29.05.2012 (Annexure-2) are set aside. The matter is remitted to the disciplinary authority



to proceed, if so desires, afresh in accordance with law.
The petitioner shall be entitled to all consequential
benefits.

(Prabhat Kumar Jha, J)

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