

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3755 of 2005

1. Uma Devi widow of Late Ram Ekbal Singh.
 2. Uday Prasad Singh son of Late Ram Ekbal Singh.
 3. Vinay Kumar Singh son of Late Ram Ekbal Singh.
 4. Abhay Kumar Singh son of Late Ram Ekbal Singh
- All resident of village Basudeopur, P.S. Kalyanpur, District Samastipur.

(Substituted)... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Gram Panchayat Raj, Government of Bihar, Patna.
2. Commissioner, Darbhanga Division, Darbhanga.
3. The District Magistrate, Samastipur.
4. Anchaladhikari, Morwa, District Samastipur.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Adv.
		Mr. Ram Binod Singh, Adv.
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 30-08-2018

The present writ petition has been filed for quashing the order of punishment dated 26.06.2004 whereby and whereunder the original petitioner has been dismissed from service.

2. The brief facts of the case are that a departmental proceeding was initiated against the original petitioner and a charge sheet was issued which is dated 03.02.1989 and it was alleged that the original petitioner has obtained employment on the basis of forged document and has embezzled some amount of the scheme, which was introduced by the government for the village people. The enquiry officer is



stated to have submitted an enquiry report dated 28.08.1989 whereafter the order of punishment dated 22.05.1990 was passed. The original petitioner had challenged the said order dated 22.05.1990 by filing a writ petition bearing CWJC No. 6221 of 1991 and a learned Division Bench of this Court by a judgment dated 07.05.1992 had quashed the order of termination as well as the enquiry report on the ground that the enquiry had proceeded ex-parte. Thereafter, it appears that the original petitioner was served with a second show cause notice dated 05.11.2001 asking him to submit his reply as to why he be not dismissed from service and then, the order of punishment dated 26.06.2004 has been passed.

3. The learned counsel for the petitioners has submitted that for the same and similar charges an F.I.R. bearing Samastipur P.S. Case no. 87 of 1989 dated 03.03.1989 was lodged against the original petitioner, however, after full-fledged trial the same has resulted in acquittal of the original petitioner by a judgment passed by the learned Trial Court dated 20.12.2001 in Trial No. 741 of 2001, hence, the original petitioner is required to be exonerated from the present disciplinary proceeding. It is next contended that there is no material on record to show that after the matter was remanded



back by this Court in the earlier round of litigation by a judgment dated 05.07.1992, the disciplinary authority had held a fresh enquiry and submitted an enquiry report inasmuch as neither the second show cause notice dated 05.11.2001, nor the order of punishment dated 26.06.2004 depicts conduct of any fresh enquiry. Nonetheless, it is the contention of the learned counsel for the petitioners that no fresh enquiry report whatsoever has been supplied to the original petitioner, hence, the second show cause notice dated 05.11.2001 and the order of punishment dated 26.06.2004 are perverse and are fit to set aside.

4. I have heard the learned counsel for the petitioners and perused the materials on record. I find that the present writ petition is fit to be allowed on the first ground alone i.e. the original petitioner has been acquitted in the criminal case and since the present disciplinary proceeding is based on same and similar facts, the instant disciplinary proceedings are unsustainable in the eyes of law. In this regard, reference be had to a judgment of the Hon'ble Apex Court reported in (2006) 5 SCC 446 (**G.M.Tank vs. State of Gujarat &Ors.**) paragraph-30 whereof is quoted herein below:-

“30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts



and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand".

5. The other issue canvassed by the learned counsel for the petitioners i.e. no fresh enquiry has been conducted in pursuance of the judgment of this Court dated 07.05.1992, thus the second show cause notice dated 05.11.2001



and the order of punishment dated 26.06.2004 are fit to be set aside inasmuch as the respondents have failed to bring on record any fresh enquiry report having been submitted, in pursuance of the judgment of this Court dated 07.05.1989. On this ground as well the writ petition is fit to succeed.

6. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the writ petition is allowed, the order of punishment dated 26.06.2004 is quashed and the respondents are directed to pay all consequential benefits to the widow of the original petitioner/ legal heirs forthwith.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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