

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18623 of 2010

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1. Raj Kumari Devi Wife of Late Tarun Kumar Yadav.
2. Rajiv Kumar Ranjan Son of Late Tarun Kumar Yadav.
3. Renu Kumari Daughter of Late Tarun Kumar Yadav.
4. Rana Kumar Son of Late Tarun Kumar Yadav.
All Residents of Koratbari, Madhubani Mohalla- Town and District- Purnea.
.... Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
3. Commissioner, Purnea Division, Purnea.
4. Collector, Araria.
5. Additional Collector, Araria.
6. Deputy Director, Consolidation, Kishanganj.
7. Sub Divisional Officer (S.D.O.), Araria.
.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain (Sr. Advocate)
Mr. Anju Narain
Mr. Raj Kishore Sinha
Mr. Anant Kumar Sinha
Mr. Umesh Kumar Ray
For the Respondent/s : Mr. (GP8)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 11-07-2018

The present petition has been filed for quashing the order dated 15.12.2009 passed by the Collector, Araria by which the original petitioner has been dismissed from service. It has been further prayed to quash the appellate order dated 08.09.2010.

2. The short facts of the case are that a departmental proceeding was initiated against the original petitioner herein vide memo dated 13.05.2009 on the allegations, primarily on the ground that the original petitioner had withdrawn the retiral dues of the retired employees by putting his signature and in such manner he



misappropriated money which did not belong to the original petitioner. It is further alleged in the charge sheet by way of charge no.3 that the petitioner was directed to submit his show cause reply but he did not submit the same, hence this act amounts to insubordination. It appears that during the course of enquiry an additional charge of irregularity in flood relief fund was added.

3. The department has initiated the departmental proceeding appointing an enquiry officer i.e the Sub-Divisional Officer, Araria. The Sub-Divisional Officer, Araria had conducted the departmental proceedings and a Departmental Inquiry case no. 01/09-10 was initiated. The petitioner is said to have participated in the said departmental proceedings and thereafter the aforesaid enquiry officer had come to a finding, in his enquiry report dated 03.07.2009, that as far as the charges no. 1 and 2 are concerned, regarding misappropriation of the retiral dues of the superannuated person, it is necessary that the signature put on the receipt showing withdrawal of money should be sent to the specialist of handwriting expert for ascertaining as to whether the said signature belongs to the petitioner or not. It has been further submitted that no witness was brought on record by the department to prove the charge of insubordination. The enquiry officer has also not found any material to connect the petitioner to the allegation of misappropriation of the retiral dues amount of the retired person.



4. Thereafter, it appears that instead of the department having sent the matter to the specialist for verification of the signature, intervened in the matter and Additional Collector by an order dated 16.07.2009 directed for re-conduct of the departmental proceedings. At this juncture, the learned senior counsel for the petitioner submits that the said direction by the Additional Collector who is not the disciplinary authority of the petitioner, is itself illegal and, therefore, the entire enquiry proceedings and the order of dismissal is fit to be set aside on the said ground alone. However, the matter did not end there and the enquiry officer had re-entered into a fresh enquiry and without placing any fresh evidence much less any evidence, now the enquiry officer took a 'U' turn and by his order dated 08.08.2009, passed in the ongoing departmental enquiry, held that the petitioner is responsible for withdrawing the retiral dues of the superannuated employees. The District Magistrate, Araria by an order dated 18.8.2009 had thereafter directed for dismissal of the petitioner from his services, however, it appears that the department realised that the same was not in accordance with law, hence it was decided to issue a second show cause notice and then the formalities had taken place, whereafter the Additional Collector had taken a decision to remove the petitioner from his services by an order dated 17.11.2009 and the same was approved by the District Magistrate, Araria on 17.11.2009 itself as is apparent from Page-99 of the writ petition. It



appears that the respondents had then issued a formal order of punishment dated 15.12.2009 by which the petitioner was dismissed from service. The said order dated 15.12.2009 was communicated to the petitioner by memo dated 17.12.2009. The petitioner had then filed an appeal against the said order, however, the same was dismissed by order dated 08.09.2010.

5. The learned senior counsel for the petitioner has submitted that the present case is a case of no evidence and in this regard he has referred to a decision of Hon'ble Apex Court reported in *(2009) 2 SCC 570 (Roop Singh Negi vs. Punjab National Bank & Ors.)* as also the judgment reported in *2010 (2) SCC 772 (State of U.P. vs. Saroj Kumar Sinha)*.

6. It is further submitted that the District Magistrate had already taken a decision by his order dated 18.08.2009 for dismissing the petitioner from his services and thereafter the formality of issuance of show cause notice to the original petitioner herein and then passing the order of punishment is absolutely not in consonance with the principles of natural justice and an empty formality which smacks of bias. Lastly, it is submitted that the entire order sheet pertaining to the departmental proceedings initiated against the petitioner herein would show that the Additional District Magistrate and the District Magistrate do not have any regard to the procedure to be followed while conducting the disciplinary proceedings much less



any sensitivity regarding the need for compliance of the principles of natural justice. It is also contended that suitable and appropriate action should be taken against the Additional District Magistrate and District Magistrate who do not have the basic knowledge of law and are not fit to be retained in the service of the Government.

7. I have heard the learned counsel for the parties and perused the records and I find that this is a classic case of glaring procedural irregularities and abuse of the process of law. It is abundantly clear that the present case is a case of no evidence and even the order of enquiry officer regarding the verification of the signature on the receipt by which the retiral dues are alleged to have been withdrawn by the petitioner has not been complied with inasmuch as the said signatures were not sent to the signature specialist for verification and to top it all, crossing all limits of propriety and procedural fairness and only upon the direction of the Additional Collector, the petitioner was falsely indicted and the charges were held to be proved without any evidence on record of the case. It is a matter of enquiry as to what was the purpose and design of the Additional Collector to order for re-enquiry in the matter without following the dictate of the enquiry officer which apparently amounts to interference in the conduct of the proceedings by the enquiry officer. The ulterior motive of the Additional Collector is writ large on the records and he had apparently pre-planned everything in



order to ensure dismissal of the petitioner from service.

8. Having regard to the facts and circumstances of the present case, the present case being a case of no evidence as also the District Magistrate, Araria having already pre-determined that the petitioner was to be dismissed from service, which is apparent from his order dated 18.8.2009, the order of punishment dated 15.12.2009 has been passed without complying with the principles of natural justice, is perverse and bad in the eyes of law, hence the same cannot be sustained, thus the same is quashed. Since the order of punishment dated 15.12.2009 has been set aside, the appellate order dated 08.09.2010 is bound to fall and is accordingly, set aside.

9. Accordingly, the present writ petition is allowed with a direction to the respondents to pay all the consequential benefits to the petitioner within a period of six weeks from today, failing which serious penal action shall be taken against the authorities.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.08.2018
Transmission Date	

