

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13130 of 2010

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Sohan Yadav S/O Sri Dwarika Yadav R/O Vill.- Abani, P.S. Goraru, Distt.- Gaya
..... Petitioner/s

Versus

1. The State Of Bihar Through Commissioner-Cum-Secretary Land Revenue, Bihar, Patna
2. The Commissioner, Magadh Commissionery, Gaya
3. The Collector, Gaya
4. The Deputy Collector, Land Revenue, Sadar Gaya
5. The Circle Officer, Konch, Gaya
6. S.D.O., Tikari, Gaya

..... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chittaranjan Sinha
	:	Mr. Amresh kr. Sinha
For the Respondent/s	:	Mr. Shankar Kr. Thakur
	:	Mr. Umesh Narayan Dubey

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 27-06-2018

1. The present writ petition has been filed challenging the order of punishment of dismissal of the petitioner from the Government service dated 22.08.2008 as also the appellate order dated 20.05.2010 passed by the Commissioner, Magadh Division, Gaya.

2. The brief facts of the case are that a charge sheet dated 28.01.2008 was issued to the petitioner and a departmental proceeding was initiated against the petitioner herein. Primarily, two charges were leveled against the petitioner; one is regarding wrongly recommending the mutation of property in question resulting in wrong mutation of the said property in the name of another person and



secondly, not filling up Form no. 84 properly. The Enquiry officer had conducted the enquiry and submitted enquiry report dated 14.05.2008, whereby and whereunder he had found both the charges to have been proved as against the petitioner herein. Thereafter, a second show cause notice dated 28.06.2008 was issued to the petitioner and then the order of punishment dated 22.08.2008 was passed, whereby and whereunder the petitioner has been dismissed from the services. The petitioner had preferred an appeal, however the same was also dismissed by the Commissioner, Magadh Division.

3. The learned Senior Counsel for the petitioner has submitted that the enquiry report would bear it out that neither any witness was examined in order to prove the charges leveled against the petitioner nor any documents were proved during the course of enquiry so as to prove the guilt of the petitioner herein. The learned Senior counsel has further submitted that the main culprit in the present case is the Circle Officer who had ultimately taken the decision for mutating the property in the name of a wrong person, however he has been lightly left-of inasmuch as, the departmental proceeding, as against him, culminated into an order of punishment dated 13.11.2008, whereby and whereunder two annual increments have been withheld with cumulative effect and it has been directed that he shall not be paid anything except subsistence allowance during



the period of suspension, hence it is submitted that the petitioner has been discriminated with. The learned Senior counsel has further submitted that infact, the Circle officer who is the final authority in the matter had granted permission for mutation, hence the respondents have adopted pick and choose policy for punishing the lowest employee in the hierarchy. The learned Senior Counsel has relied upon judgments rendered by the Hon'ble Apex Court, reported in **(2009) 2SCC 570 (Roop Singh Negi v. The Punjab National Bank)**, **(2010) 2SCC 772 (State of U.P. v. Saroj Kr. Sinha)** and the judgment reported in **2000(3) PLJR 10 (Kumar Upendra Singh Parimar vs. B.S. Co-Opt Land Dev. Bank Ltd. & Ors.)**. It would be relevant to quote paragraphs no. 12, 15, 16, 18 and 19 of the judgment rendered in the case of **Kumar Upendra Singh Parimar (supra)** herein below:-

“12. Under those rules there are detailed provisions for holding regular departmental enquiry. In holding of a departmental enquiry it is required to prove the charges against the delinquent employee by producing the departmental witnesses and by examining them by the enquiry officer. If the delinquent employee does not attend the enquiry even then the department has to prove the charge by examining the witnesses in support of its own documents. In the departmental enquiry no onus is cast upon the delinquent employee to prove the charges. The charges have to be proved by the department. If no witness is called by the department in support of the charges in that case it should be held that the department has not proved its case and in such a situation the enquiry officer cannot



record the findings with regard to guilt against the delinquent employee just because the delinquent employee is absent.

15. Reference in this connection may be made to the Constitution Bench Judgment of the Apex Court in the case of Union of India vs. H.C. Goel, reported in A.I.R. 1964 S.C. page 364.

His Lordships Gazendra Gadkar, J. His Lordship's then was, summarised the law in this respect as follows:-

"It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules."

16. Since the aforesaid principle laid down by the Constitution Bench of the Supreme Court has been subsequently followed in many other cases, and has not been departed from till today, this Court cannot accept the bald statement urged by the learned counsel for the respondent that since the charges are based upon the documents so no witnesses need be examined to bring home the charges.

18. This Court cannot accept this argument for the reasons already indicated when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand, onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.



19. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See D.K. Jadav vs. J.M.A. Industries Ltd., reported in (1993)3 SCC page 259 : 1994(2) PLJR (SC)55.”

4. *Per contra*, the learned counsel for the State has submitted that there is no irregularity in the conduct of the departmental proceedings, hence this Court would not sit in appeal and re-appreciate the evidence. Thus the order of punishment is required to be upheld. The learned counsel has further referred to the reply of the petitioner to the second show cause to contend that the same would show that the petitioner had recommended for mutation of the concerned property in favour of a wrong person.

5. I have heard the learned counsel for the parties and gone through the materials on record. It is the admitted fact, which has not been controverted by the respondents, that neither any witness was examined by the department nor any document was proved during the course of enquiry, as such the entire enquiry stands vitiated, consequently the order of punishment dated 22.08.2008 is also



vitiated. In such view of the matter, the enquiry report dated 14.05.2008 and the order of punishment dated 22.08.2008 cannot be upheld since the same have been passed contrary to the law laid down by the Hon’ble Apex Court, as discussed hereinabove, as such, the same are set aside. As a consequence of the quashing of the punishment order dated 22.08.2008, the appellate order dated 20.05.2010 is bound to fall and the same is also quashed.

6. The writ petition is allowed.

(Mohit Kumar Shah, J)

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CAV DATE	NA
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