

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15687 of 2008

=====

Sri Bechan Ram S/o Late Asharfi Asharfi Ram, Resident of vill. Raipur P.S.
Nanpur Dist. Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The State of Jharkhand.
3. Sri N.K. Agrawal Commissioner cum Secretary of Gramin Vikash Vibhag Rural Development Deptt. Vishwaraiya Bhawan, Patna.
4. Sri Bangali Ram, Deputy Secretary of Govt. of Bihar, Rural Development Deptt. Vishwaswaraya Bhawan Patna
5. Abhash Kumar Jha Dy. Development Commissioner-cum-Chief Executive Officer, Hazaribagh.
6. Sri Dhaneshwar Baitha, Engineer-in-Chief of Gramin Vikash Vibhag Nirmal Bhawan, Patna
7. Sri Satya Narain Sah District Engineer District Board hazaribagh.
8. Sri Arun Kumar Singh Accountant general Birchand Pael Path Patna
9. Sri T.P. Sharma Treasury Officer Hazaribagh.
10. Sri A.K. Rajak Director Panchayati Raj Patna
11. Sri Ravi Mittal Dy. Commissioner Pakur
12. Sri Radhey Shyam Bihari Singh, Dy. Commissioner Pakur
13. Sri Alok Vardhan Chaturvedi Dy. Commissioner sahebganj.
14. Sri Nirmal Vasuki Dy. Development Commissioner, Pakur.
15. Sri Sujata Chaturvedi, Dy. Development Commissioner, Sahebganj.
16. Sri Navin Kumar Notified Executive Engineer, NREP Sahebganj.
17. Sri Bhagirath Ram, Under Secretary of Govt. Dept. of vishvasraiya Bhawan, Patna.
18. Sri Devendra Kishor Das, Joint Secretary, Road Construction Deptt. Patna.
19. Treasure Officer, Sahebgaj.\
20. Sri Sisir Sinha, Secretary Road Construction Deptt. Patna
21. Sri Ramashray Ram, Superintending Engineer, Bhojpur Road Construction Deptt. Circle, Arah.
22. Sri Ran Vijay Singh, Technical Advisor of Superintending Engineer, Bhojpur Road Construction Deptt. Patna.
23. Sri Jintendra Kumar Shrivastava District Magistrate, Bhojpur Arrah.
24. Sri Arun Kumar Varnwal Treasury Officer Bhojpur Arrah.
25. Sri Pramod Kumar Vidyarthi Chief Engineer, Central Design Organisation, Road Construction Deptt. Patna.
26. Sri Bholu Ram, Under Secretary Road Construction Deptt. Patna.
27. Sri Raj Kumar Singh at present Secretary Road Construction Deptt. Patna.
28. Sri Dev Kant Diwakar, The Dy. Secretary cum Chief vigilance Officer Road Construction Deptt. Patna.
29. Sri Narain Jha Under Secretary Public Litigation Cell Road Construction Deptt. Bishwasraiya Bhawan, Patna.
30. Sri Vijay Kumar Sinha, Deputy Secretary, Road Construction Deptt. Patna Bishwariya Bhawan, Patna.
31. Sri Girish Shankar Principal Secretary, cabinet Secretariat Patna
32. Sri Chitrnjan Singh Dy. Secretary of Chief Minister Secretariat Patna.

.... Respondent/s



=====

Appearance :

For the Petitioner/s : Mr. Bipul Kumar, Advocate
Mr. Niranjan Kumar, Advocate

For the Respondent/s : Mr. (AAG2)
Mr. Binod Jee Verma
Mr. J.P.Karn
Mr. Dhruva Mukherjee
Mr. Jitendra Kumar Roy
Mr. Satyavrat Verma

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 27-03-2018

Heard counsels for the petitioner and the respondent State.

2. The writ petition has been filed challenging the order of punishment dated 09.04.2008 issued under the notification of the Road Construction Department wherein the petitioner has been awarded punishment of dismissal of service with immediate effect.

3. Counsel for the petitioner submits that the charge which was enquired into pursuant to charge memo dated 17.05.2006 is alleging petitioner's unauthorized absence from 31.01.1997 to 22.11.2005. The issue was enquired into and enquiry report which is Annexure 13 of the writ petition dated 112.03.2007 was submitted. The same is a detailed report. It has taken into consideration the cause of issue being enquired into with reference to the various notifications issued in respect of the petitioner's posting right from February, 1996 up till 2005.



4. Enquiry Officer has considered all the notifications transferring the petitioner from one place to the other and various orders passed on the writ and contempt petitions filed by this petitioner. Stand of the department has also been considered by the Enquiry Officer in detail. The Enquiry Officer has thus, concluded that the handing over and taking over of charge pursuant to the notification dated 30.12.1996 bearing no. 6766 purporting to revert the petitioner to his parent department being the Road Construction Department from the Rural Development Department and simultaneously purporting to post one Navin Kumar in place of the petitioner was not in accordance with law. It has been found by the Enquiry Officer that the petitioner had not been relieved in accordance with law and in his place unilaterally another person namely, said Navin Kumar has been made to join and as a result of petitioner's illegal dislodging from the post of Executive Engineer NREP, Sahebganj, the entire problem has occurred.

5. The issue has finally been resolved in light of order dated 30.06.2005 passed in MJC No. 2527 of 2003 where after the final order dated 22.11.2005 has been issued by the authority enabling the petitioner to submit his joining on the post of Executive Engineer in the Road Construction Department at Bhojpur Ara.

6. The Enquiry Officer has also considered the fact that



in view of the illegal manner in which the petitioner has been dislodged from his post under order dated 30.12.1996, the Department as well as the office of the Accountant General were treating the petitioner as being Executive Engineer in the NREP, Sahebganj and all the correspondence in this regard including issuance of pay slip was being done treating the petitioner as Executive Engineer, NREP Sahebganj. Thus, a detailed consideration has been made by the Enquiry Officer with respect to all the relevant facts and circumstances and accordingly, he has concluded that the allegation of his unauthorized absence from 31.01.1997 to 22.11.2005 could not be proved in the proceedings against the petitioner.

7. Counsel for the petitioner has submitted that all the procedural requirements under the **Bihar Government Servants(Classification Control & Appeal) Rules, 2005** (hereinafter referred to as 'Bihar CCA Rules) have been thrown to the winds. He has relied upon Rule 18 of the Bihar CCA Rules to submit that in case the disciplinary authority proposed to differ with the findings of the Enquiry Officer it was required to record its reason for such disagreement and forward the same to the petitioner along with copy of the enquiry report calling upon the petitioner to give his comments. This procedure has been violated in the instant case as the second show cause proposing to differ with the findings of the Enquiry



Officer is in fact a post decisional hearing and does not subserve the Principles of Natural Justice.

8. The second show cause dated 30.04.2007 is illegal and unsustainable on two grounds. It has been issued after concluding the petitioner's guilt in respect of the charge, a definite and explicit finding has been recorded that the petitioner has violated the Rule 76(b) of the Bihar Service Code and such post decisional hearing is impermissible. Secondly that *prima facie* it appears from the said order dated 30.04.2007 that second show cause is at best a show cause against the proposed punishment and no reason for disagreeing with the detailed consideration and finding of the Enquiry Officer are to be found in the second show cause dated 30.04.2007.

9. Counsel for the petitioner has also drawn attention of the Court to the opinion/recommendation of the BPSC in respect of the charge levelled against the petitioner of unauthorized leave. The BPSC too in its letter dated 27.11.2007 opined that the petitioner would not be liable for any punishment considering the various aspects which have been considered by the Enquiry Officer regarding the petitioner's relieving from the post of Executive Engineer NREP, Sahebganj not being in accordance with law for considerable period of time.

10. The said submissions on behalf of the petitioner appear



to be correct. The same is evident from perusal of the second show cause dated 30.04.2007 as also the recommendation of the Commission dated 27.11.2007.

11. By resorting to such procedure unknown to law in violation of Principles of Natural Justice as also violation of Statutory procedure prescribed under the Bihar CCA Rules, the order of punishment has been passed by the respondent authorities on 09.04.2008 which is result of the illegal procedure adopted by the respondent authorities as noticed above and is unsustainable in law.

12. The impugned order clearly appears to be based on surmises and conjectures and is without reference to any material against the petitioner, perverse and is unsustainable in law. The same is hereby quashed.

13. As a result of quashing of the impugned order, the petitioner would be entitled for all consequential benefits in accordance with law.

14. The writ petition is allowed to the extent indicated herein above.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.04.2018
Transmission Date	

