IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8132 of 2016

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Shakuntala Devi, W/o late Agnu Choudhary, Resident of Village- Harpura, Police Station- Bikram, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director Agriculture, Government of Bihar, Patna,.
3. The Joint Director Agriculture, Tirhut Division, Muzaffarpur.
4. The District Agriculture officer, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Adv.
Ms. Shally Kumari, Adv.

For the Respondent/s : Ms. Binita Singh, SC-24

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-05-2018

Heard Mr. Siya Ram Shahi learned counsel for the petitioner and Ms. Binita Singh learned SC-24.

With the consent of the parties the writ petition is heard with the view to final disposal at the stage of admission.

The petitioner is aggrieved by the order bearing Memo No.742 dated 21.05.2014 of the Joint Director, Agriculture, Tirhut Division, Muzaffarpur whereby he has been dismissed from service. The appeal of the petitioner has also been rejected by the Director, Agriculture vide memo No.83 dated 22.01.2016. The orders passed by the Disciplinary Authority and the Appellate Authority are impugned at Annexure- 8 and 12 respectively.

The petitioner has deceased during the pendency of the writ petition and has been substituted by his widow vide order passed on 15.05.2018.

The charge set up against the petitioner is enclosed at Annexure-4 and charges the petitioner on 5 counts which mainly revolve around accounting deficiency. According to the charges, though money has been withdrawn by the petitioner as a Cashier, District Agriculture Office, East Champaran Motihari, during the period 2013-14 but it is not properly accounted for. According to Mr. Shahi, learned counsel for the petitioner it is following a raid conducted by the Economic Offence Unit of the State of Bihar, in the office of the District Agriculture Officer which also led to institution of a criminal case that during the course of investigation an amount of Rs.8,71,400/- was seized from the Almirah in the office of the petitioner along with some vouchers.

Although, no order is enclosed of the Disciplinary Authority initiating proceeding either by the petitioner or by the State but presumably there must be some order existing in this regard for in its absence the entire proceeding would be illegal.

Be that as it may, the pleadings on record would suggest that the Charge Memo was issued, the petitioner was put on notice on the allegations and through his representation dated 16.09.2013 he has clarified each of the allegation. It is explained that the amount(s) were withdrawn from the bank for specific purposes and while a part thereof has been spent over the purposes explained in the reply, the balance remained in the Almirah which was illegally seized. The explanation did not suit the District Agriculture Officer and which led to service of the charge memo at Annexure- 4 which again was responded to by the petitioner reiterating the position as present at Annexure- 3 but has resulted in the Enquiry Report upholding the guilt, a copy of which is at Annexure- 6 bearing memo No. 658 dated 24.04.2014.

Mr. Shahi in reference to Enquiry Report submits that it is simply going by the allegation and the acceptance thereof by the Presenting Officer that despite the petitioner explaining the withdrawals, the Enquiry Officer has proceeded to reject the same. It is submitted that the opinion of the Enquiry Officer has been mechanically affirmed by the Disciplinary Authority to pass the order of dismissal in exercise of power vested under the Rule 14 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005 (hereinafter referred to as ‘the Disciplinary Rules’) as amended from time to time, vide order bearing memo No. 742 dated 21.5.2014 impugned at Annexure-8 and which has been affirmed by the appellate authority vide order bearing Memo No. 83 dated 22.01.2016 impugned at Annexure-12.

The entire proceeding has been questioned by Mr. Shahi on grounds that they are resting on no evidence and even if any kind of financial irregularity is found, it is a mere accounting error which can well be corrected. According to Mr. Shahi even if the allegation is taken on the face value it would yet not constitute ‘misconduct’ to invite a proceedings much less a punishment of dismissal.

Ms. Singh learned State counsel has the difficult task to defend the orders impugned for in absence of any charge facing the petitioner on misappropriation of the amount, a mere accounting lapse even if be a matter of explanation and correction, it cannot fit into the category of misconduct for neither the charges allege a motivated action by the petitioner nor does it charge him towards unjustful gains on such withdrawal.

I have heard learned counsel for the parties and I have perused the records.

In my opinion, the charge as set up against the petitioner is incapable of reducing in a disciplinary proceeding for any complaint of financial irregularity unless accompanied with a charge of misappropriation or for self gain or for providing unjust benefit to third party, *ipso facto* cannot be termed as ‘misconduct’. A plain look at the charge memo would confirm that there is no such charge facing the petitioner. In fact, each of the charge while accepting a withdrawal for a purpose and also recording that a part thereof was spent on such purpose, simply mentions that some amount there from has remained in the Almirah. This Court is at a loss to understand as to how a balance remaining from certain withdrawal can amount to a misconduct. It is surprising that even when the petitioner has given a detailed explanation of the withdrawal and expenditure at Annexure-3, the Enquiry Officer has simply rejected the explanation as not being backed by suitable documents. In my opinion in case the Enquiry Officer was not satisfied by the explanation given, he should have asked the deceased petitioner to support his stand by evidence but in absence of any charge of withdrawal for ulterior purposes or with a view to misappropriation, an accounting lapse simplicitor would not constitute a misconduct.

The Joint Agriculture Director as the Disciplinary Authority has taken an even shorter route to disposal of the matter by simply endorsing the view of the Conducting Officer. There is no reason assigned for such extreme punishment or for rejecting the explanation of the petitioner. In fact, a plain look at the charge memo would confirm that no misconduct is alleged against the petitioner rather he has simply been put on notice to explain the withdrawal. It is long settled that a vague charge cannot provide a foundation for a disciplinary action. It is equally well settled that a charge of misconduct has to be point specific and not in the nature of an explanation call. A plain look at the charge memo at Annexure 4 would confirm that even while charging the petitioner on accounting lapse or in not following proper procedure, no imputation is made that the act constituted financial misconduct.

For expressing my opinion on the issue that not every act of violation would constitute a misconduct unless it is backed by a motivated mind with evil designs to benefit self or provide unjust gain to some other, I am persuaded to refer to the opinion expressed on the issue in the judgment rendered in the case of **Union of India Vs. J. Ahmad** since reported in (**1979) 2 SCC 286:**

The Supreme Court on examination of the charges held as follows in paragraph 9 :

> "**9.** The five charges listed above at a glance would convey the impression that the respondent was not a very efficient officer. Some negligence is being attributed to him and some lack of qualities expected of an officer of the rank of Deputy Commissioner are listed as charges. ……………………..…………
> ……………………………………………………
> ……………………Competence for the post, capability to hold the same, efficiency requisite for a post, ability to discharge function attached to the post, are things different from some act or omission of the holder of the post which may be styled as misconduct so as to incur the penalty under the rules. The words "act or omission" contemplated by Rule 4 of the Discipline and Appeal Rules have to be understood in the context of the All India Services (Conduct) Rules, 1954 ("Conduct Rules" for short). The Government has prescribed by Conduct Rules a code of conduct for the

> members of All India Services. Rule 3 is of a general nature which provides that every member of the service shall at all times maintain absolute integrity and devotion to duty. Lack of integrity, if proved, would undoubtedly entail penalty. Failure to come up to the highest expectations of an officer holding responsible post or lack of aptitude or qualities of leadership would not constitute as failure to maintain devotion to duty. ………………………………………
> ………………………………………………………
> ………………………………………………………
> ………………………………………………………. Allegations in the various charges do not specify any act or omission in derogation of or contrary to Conduct Rules save the general Rule 3 prescribing devotion to duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings. …………….……………………"

While taking note of the dictionary meaning of the word "misconduct", the court has held in paragraph 11 as follows:-

> "11…………A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences, the same may amount to misconduct……………………………………………
> ………………………………………………………
> ………………………………………………………
> …………………….. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to

> negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see *Navinchandra Shakerchand Shah* v. *Manager, Ahmedabad Coop. Department Stores Ltd.*8). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

A similar view was taken by the Supreme Court in a judgment reported in **AIR 1992 SC 2188 (State of Punjab Vs. Ram Singh)**. Para 4 and 5 of the judgment reads thus:

> "4. Misconduct has been defined in Black's Law dictionary, Sixth Edition at page 999 thus:
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> 'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness." Misconduct in office has been defined as: "Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office-holder had no

right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.’ In P. Ramanatha Aiyar’s the Law Lexicon, Reprint Edition 1987 at p.821, „misconduct’ defines thus: “The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion if left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected.”

5. Thus it could be seen that the word “misconduct” though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. …………………….”

Considering the charges in the background of the position settled on the issue of 'misconduct', the order of the Disciplinary Authority in simply affirming the charge without bothering to examine whether the charge simplicitor attributes a misconduct and without assigning reasons for such affirmation or for rejection of the explanation of the petitioner, has proven disastrous because the charge does not allege any act of misconduct on the petitioner, save and except a failure on the petitioner to properly maintain the account statement and/or keeping large sums in the almirah. The appellate authority goes even a step further inasmuch as at paragraph 2, the Appellate Authority i.e the Agriculture Director, finds the petitioner guilty of misconduct of misappropriation of Government funds even when no such charge is framed. The appellate order thus has gone beyond the charge which nowhere charges the petitioner of misappropriation.

In my opinion, in absence of any charge of misappropriation on the petitioner, the entire proceeding was void ab initio and incapable of being translated into a disciplinary proceeding until such time that the evidence available confirmed the petitioner guilty of such act of financial misconduct. The findings by the Enquiry Officer as affirmed by the Disciplinary/Appellate Authority, is perverse for it is resting on a vague charge unsupported by evidence or misappropriation or a financial fraud.

In result the entire proceedings culminating in the order bearing Memo No. 742 dated 21.5.2014 impugned at Annexure-8 and the order bearing Memo No. 83 dated 22.01.2016 impugned at Annexure 12 are quashed and set aside. Since the petitioner has deceased on 29.05.2016, he would be deemed reinstated from the date of dismissal and would be entitled to full backwages until his death on 25.09.2016 and thereafter the present petitioner would be entitled to grant of post retiral/terminal benefits to which she is found entitled in accordance with law.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	04.06.2018
Transmission Date	NA