

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16539 of 2014

Subodh Kumar Verma Son of Late Ram Chandra Prasad Verma, Resident of Mohalla - Nazirpur Bank Colony Muzaffarpur, P.S. - Ahiyapur, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary of the Department of Health, Government of Bihar, Patna.
3. The Director in Chief of the Health Services, Bihar, Patna.
4. The Regional Deputy Director of the Health Services, Tirhut Division, Muzaffarpur.
5. The Superintendent of the Sri Krishna Medical College and Hospital, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Nivedita Nirvikar, Mr. Manoj Kumar, Mr.
: Ujjawal Kumar Sinha & Mr. Prabhakar Sahai, Advs.
For the Respondent/s : Mr. Kameshwar Kumar G.P. 17

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 25-04-2018

This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 13.02.2014 passed by the Director-in-Chief, Health Services, Government of Bihar, Patna, by which petitioner has been removed from service.

2. Briefly stated the case of petitioner is that while he was posted as Clerk in the Sri Krishna Medical College and Hospital, Muzaffarpur, he was holding the charge of Medical Store and in addition he was also holding the charge of Establishment of Class-IV employees as well as Diet Clerk

3. All the employees who were going to retire, notice for



submitting all the relevant papers are given to them one year before their retirement. As such vide office order dated 21.04.2011 information was given to all the Class IV employees who were going to retire in the year 2012 including Sonelal Sahani (Ward Servant) who was going to retire on 31.03.2012.

4. Petitioner used to prepare the records and recommend to the Head Clerk for final approval and employees who had furnished complete documents their claims were approved within time. However Sonelal Sahani did not submit his pension papers, as such his claims could not be approved within time. Petitioner approved his claims of leave encashment and provisional pension on 20.04.2012 which was pending for approval before the Head Clerk of the Hospital. The amount of Group Life Insurance was not sanctioned as same could not be granted before payment of last salary of retired employees. The salary for the month of March 2012 was paid on 15.05.2012.

5. Sonelal Sahani filed a false complaint against petitioner before the Vigilance, upon which Patna Vigilance P.S. Case No. 40 of 2012 dated 22.05.2012 was instituted against the petitioner in which petitioner was arrested and is facing criminal trial before Vigilance Court.

6. It is a settled proposition of law that departmental



proceeding as well as criminal proceeding based on similar charges and identical set of evidences can continue simultaneously and Disciplinary Authority is under no obligation to stay the departmental proceeding, during the pendency of criminal proceeding unless and until there is an order by court of law or departmental rules provide as such. The standard of proof in departmental proceeding and criminal proceedings are different and it may be possible that on identical charges and identical evidences accused can be exonerated by the criminal court as charges are to be proved beyond reasonable doubt whereas on similar charges and similar set of evidences a delinquent can be held guilty in departmental proceeding as charges in the departmental proceeding is to be established on preponderance of probabilities. Petitioner was put under suspension on 08.06.2012 and a decision was taken for initiation of Departmental Proceeding by Memo dated 27.06.2013 appointing the Regional Deputy Director of Health Services, Tirhut Division, Muzaffapur as Enquiry Officer and Superintendent of S.K.M. Medical College and Hospital, Muzaffapur as the Presenting Officer and Memo of Charge in Prapatra 'Ka' was issued leveling two charges against petitioner.

7. Petitioner was asked to file reply vide letter dated



09.07.2013 within one week of the receipt of the documents mentioned therein. On 12.07.2013 petitioner wrote to respondent NO. 4 for supply of documents mentioned in letter dated 09.07.2013 as same was not enclosed with memo of charge and same was supplied to the petitioner vide letter dated 19.07.2013.

8. Two charges were framed against petitioner (i) Petitioner was arrested on 22.05.2012 by the raiding party of Vigilance while accepting bribe. (ii) In the Vigilance Case No. 40 of 2012 dated 22.05.2012 allegation is of accepting bribe from Sonelal Sahani for payment of his terminal benefits. It has been alleged that petitioner has caused delay in granting terminal benefits.

9. Petitioner submitted his reply before respondent No. 5 on 25.07.2013 denying all the charges. It has been submitted that during the entire enquiry proceeding no witnesses have been examined nor any document has been exhibited as an evidence. Complainant Sonelal Sahani was not examined as a witness by the department and even personal file kept in the establishment of Hospital were not produced before the Enquiry Officer.

10. The suspension of petitioner was revoked vide



memo dated 06.08.2013 issued by respondent No. 5 with effect from 09.07.2013

11. A 2nd show cause notice vide memo dated 21.11.2013 was issued by respondent No. 3 alleging that charge of causing delay in payment of terminal benefits of Sonelal Sahani has been found to be proved by the Enquiry Officer in the proceeding, however, enquiry report was not enclosed along with 2nd show cause and, as such, petitioner demanded enquiry report from respondent No. 4 on 27.11.2013. Petitioner was informed by letter dated 06.12.2013 that enquiry report has been sent in the Office of Director-in-Chief, Health Services, Bihar, Patna vide letter dated 11.09.2013.

12. Petitioner went in the office of Director-in-Chief, Health Services on 04.12.2013 for a copy of enquiry report but same was not given to petitioner. Petitioner thereafter made various attempts to get the enquiry report but same was never given to petitioner.

13. By order dated 13.02.2014 passed by Director-in-Chief, Health Services petitioner was terminated from service. Petitioner has filed statutory appeal before the respondent No. 2 against order of his termination on 19.03.2014 but no order has been passed. Petitioner got superannuated on 31.08.2014 during



pendency of his appeal.

14. From the enquiry report as enclosed in counter affidavit, it appears that no oral evidence or documentary evidence has been adduced on behalf of Presenting Officer and even thereafter charges have been held to be proved and, as such, such enquiry report is no enquiry as it is based upon no evidence and accordingly it is quashed. The order of Disciplinary Authority without serving a copy of enquiry report to the petitioner and without considering any defence of the petitioner has been passed cannot be sustained and is accordingly quashed.

15. Since the petitioner has already retired from service. Respondent authorities are directed to pay him 90% of provisional pension and 90% of gratuity and all other retirement benefits which are due to him within three months from the date of receipt/production of a copy of order of this Court. Since Vigilance Case is still pending against petitioner, as such, final pension and gratuity cannot be paid to him and he is entitled for 90% of provisional pension and 90% gratuity. The respondent authorities can pass appropriate order under Bihar Pension Rules, if petitioner is found guilty by the Vigilance Court.

16. The writ petitioner is allowed to the extent as



indicated above. However, this order will not come in the way of Disciplinary Authority, if he thinks proper to initiate fresh proceeding against the petitioner in accordance with law and in conformity with procedure as laid down in Bihar Government (CCA Rules) 2005/Bihar Pension Rules.

17. The writ petition is allowed, however, without any costs.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

