

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7474 of 2013

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KAPIL DEO SINGH S/O LATE BASHISTH NARAYAN SINGH R/O
VILLAGE- TEGHRA, P.S.- BAKHTIYARPUR, DISTT.- SAHARSA

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary Minor Irrigation Department, Government Of Bihar, Patna
3. Deputy Secretary Minor Irrigation Department, Government Of Bihar, Patna
4. Chief Engineer Minor Irrigation Department, Government Of Bihar,
Bhagalpur
5. Superintending Engineer Minor Irrigation Department, Government Of
Bihar, Saharsa Circle, Saharsa
6. Executive Engineer Minor Irrigation Department, Government Of Bihar,
Saharsa Circle, Saharsa

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 7557 of 2013

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Vijay Krishna Sinha S/O Late Mani Chandra Sinha R/O Village- Bhuriya,
P.O. And P.S.- Sau Sanhalwa, Dstt.- Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary Minor Irrigation Department, Government Of Bihar, Patna
3. Deputy Secretary Minor Irrigation Department, Government Of Bihar, Patna
4. Chief Engineer Minor Irrigation Department, Government Of Bihar,
Bhagalpur
5. Superintending Engineer Minor Irrigation Department, Government Of
Bihar, Saharsa Circle, Saharsa



6. Executive Engineer Minor Irrigation Department, Government Of Bihar,
Saharsa Circle, Saharsa

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 7474 of 2013)

For the Petitioner/s : Mr. Ratan Kumar

For the Respondent/s : Mr. AMAR NATH DEO

(In Civil Writ Jurisdiction Case No. 7557 of 2013)

For the Petitioner/s : Mr. Ratan Kumar

For the Respondent/s : Mr. A.UJJWAL

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 30-01-2018

Heard learned counsel for the parties.

This writ petition under Article 226 of the Constitution of India has been filed for setting aside the order of punishment dated 28.01.2008 vide memo no. 541 (CWJC No. 7474 of 2013) and vide memo no. 539 (CWJC No. 7557 of 2013) by which order has been passed to recover the amount from the salary of the petitioners as paid to forged employees from October-99 to August-2002 (CWJC No. 7474 of 2013) and from October-1999 to August-2002 (CWJC No. 7557 of 2013) as well as the order dated 11.12.2012 vide Memo No. 6364 (CWJC No. 7474 of 2013) and vide Memo No. 6366 (CWJC No. 7557 of 2013) passed by the appellate authority dismissing the appeal of petitioners.



Briefly stated, the facts of the case as stated in the petition is that the petitioners were working as Correspondence Clerks in the Minor Irrigation Department, Saharsa and were made Incharge of Establishment for the period from 1999 to 11.07.2004, and three persons namely Sajjan Bhagat Accounts Clerk, Bhupendra Yadav Treasurer cum Night Guard and Pappu Kant Thakur, came from different areas on transfer and joined on the same post in October-1999. They submitted their joining report on different dates in the office of Minor Irrigation Department, Saharsa. Subsequently, it was detected that these letters of appointment were forged and all the three employees were forged employees, and had illegally drawn the salary for the period from October-1999 to August-2002. A departmental proceeding was initiated against the petitioners under Bihar Government Servant (Classification, Control & Appeal) Rules-2005 vide memo dated 28.01.2008, and was inflicted order of punishment of recovery of Rs. 2,65,899/- and Rs. 1,57,737/-from their salary. The petitioners had earlier filed CWJC No. 5710 of 2013 and CWJC No. 5555 of 2008, against the order of disciplinary authority, which was disposed of with a direction to avail the statutory remedy of appeal and



pursuant thereto petitioners filed an appeal before the appellate authority which was also dismissed on 11.12.2012.

It has been contended on behalf of the petitioners that they were Correspondence Clerk and Incharge of Establishment, and were not empowered to examine the appointment letters of service matter of a person and it was the responsibility of the head of the office to ascertain genuineness of such person.

A counter affidavit has been filed on behalf of the respondents in which it has been stated that the petitioners while working as Correspondence Clerks in the Minor Irrigation Department, Saharsa were found *prima facie* guilty of negligence of duty, indiscipline and financial irregularities. The petitioners have connived with the fake employees and played a major role in making payment to them vide memo of charge dated 24.01.2006 from October-1999 to August-2002, which caused loss to the exchequer. For the lapses on the part of the petitioners departmental proceeding was initiated against them and a memo of charge dated 24.01.2006 was served upon them under the Bihar Government Servant (Classification, Control & Appeal) Rules-2005. The enquiry officer was appointed and after giving opportunity to the



petitioners and going through materials available on record and evidence collected by the department, charges against the petitioners were proved and on the basis of charges being proved in the departmental proceeding, the disciplinary authority passed the order of punishment for recovery of Rs. 2,65,899/- and Rs. 1,57,737/- from their salary by order dated 28.01.2008.

After hearing both the parties and going through the materials on record, this Court finds that only the petitioners cannot be saddled with the responsibility of scrutiny of transfer order on which the impostor employees joined and worked and were also paid their salary for the said period. The loss sustained by the Government has to be apportioned between all the persons, who were responsible to detect and verify the letters and documents on which forged employees have joined. The loss suffered by the Government and the petitioners who were correspondence clerk only cannot be saddled with the loss suffered by Government alone. It has been contended on behalf of the petitioners that they were correspondence clerks and they were not empowered to examine the appointment letters or transfer orders or genuineness of such documents, who have joined in



the office pursuant to transfer order and it was the responsibility of the head of the institution to get it verified from the office from which transfer orders were issued. The petitioners have relied upon Rule-19 of Bihar Record Manual and Bihar Treasury Rule Part-1 Rule 289, in which the duty and responsibility has been laid down, which envisages that the head of the department is responsible to verify and ascertain the genuineness. Rule 13 to 90 of Bihar Record Manual defines the duty of correspondence clerks which states that correspondence clerks are not authorized to verify the genuineness of transfer orders. It has been further contended that the petitioners have been made scapegoat although the head of the office i.e. Executive Engineer was responsible to verify the transfer order, after accepting their joining and making payment for their salary.

The Enquiry Officer in its report has held that the Drawing and Disbursing Officer is primarily responsible for salary payment to forged employees. The Enquiry Officer has not held that the charges against the petitioner is proved. It has only been opined by the Enquiry Officer that petitioners cannot be absolved from the charges. The Enquiry Officer as well as Appellate Authority has held that all the employees in



hierarchy are responsible for loss to the Government and head of the department has the highest responsibility. When there was specific finding of the Enquiry Officer that Drawing and Disbursing Officer is primarily responsible for loss sustained by the Government, the Disciplinary Authority ought to have drop the present and initiated *de novo* enquiry against all in the hierarchy including head of the office i.e. Executive Engineer and ought to have apportioned among all the loss sustained by the department but has saddled all the loss to be recovered by these two petitioners who are lowest in the ladder of hierarchy. The finding recorded by Disciplinary Authority that the charges against the petitioner has been proved in the departmental enquiry is also not correct as no such finding has been recorded by the Enquiry Officer.

Learned counsel for the petitioner has relied upon a judgment of this Court in the case of **Mahendra Prasad Sharma vs the State of Bihar & Ors** since reported in **2012(2) PLJR 655**, relevant para of which has been quoted hereinbelow:-

"14. Thus from the aforesaid binding precedents of the Apex Court it becomes clear that there can be no varying standard in inflicting punishment for the same



misconduct. In the present case, it is also more than clear that the petitioner being a Section Officer was not alone responsible for issuance of transfer order, inasmuch as, the same was issued only after the approval of the higher authorities including the Deputy Director, Additional Secretary and the Departmental Secretary. It is curious to note that none others were even subjected to departmental proceeding and in fact let off by issuing a warning to them whereas the petitioner was inflicted punishment of withholding of 25 per cent pension."

In the result, the writ petition is allowed and order passed by the Disciplinary Authority as well as Appellate Authority is quashed. The amount, if any recovered, be paid to the petitioner in CWJC No. 7474 of 2013 and to the widow of petitioner in CWJC No. 7557 of 2013 (Vijay Krishna Sinha since deceased) within three months from the date of receipt/production of a copy of the order passed by this Court.

However, this order will not preclude the Disciplinary Authority to realize the amount after *de novo* enquiry against all the employees found responsible for pecuniary loss suffered by Government.



The writ petition stands allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.02.2018
Transmission Date	N.A.

