IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1537 of 2017

In

Civil Writ Jurisdiction Case No.286 of 2016

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1. The State of Bihar through the Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
2. The Appellate Authority-cum-Principal Secretary, Co-operative Department, Government of Bihar, Patna.
3. The Disciplinary Authority-cum-the Registrar, Co-operative Societies, Govt. of Bihar, Patna.
4. The Enquiry Officer-cum-the Joint Registrar, Co-operative Societies, Tirhut Division, Muzaffarpur.
5. The Presiding Officer-cum-the District Co-operative Officer, Muzaffarpur.

... ... Appellant/s

Versus

1. Ramadhin Prasad Singh, S/o Late Vibhishan Prasad Singh, Resident of Mohalla- Ishakchak, Shitla Sthan Road, Gumti No.- 12, P.O.- Ishakchak, P.S.- Ishakchak, Town & District- Bhagalpur.
2. The Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Binay Kr. Pandey (A.C. To G.A. 2)
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 09-08-2018

I.A No. 7880 of 2017

This interlocutory application has been filed for condoning the delay of about 231 days in preferring this appeal.

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For the reasons mentioned in this interlocutory application, we are satisfied that the appellants were prevented by sufficient cause in preferring this appeal within time.

As a result, this interlocutory application is allowed and the delay in filing this appeal is hereby condoned.

L.P.A. No.1537 of 2017

This appeal is being heard on its merit at this stage itself on the consent given by the appellants.

This appeal is directed against the judgment dated 13.02.2017 passed by a learned Single Judge of this Court in C.W.J.C No. 286 of 2016. In the writ petition petitioner had made prayer for quashing the memorandum of charge, enquiry report, order of dismissal and the order in appeal, copies of which have been annexed as Annexures- 10, 28, 30 and 32 respectively.

The short facts of the case is that the writ petitioner was allegedly caught red handed while accepting a bribe of Rs. 2000/- by the trap team of the Vigilance Department. F.I.R was lodged and the trial is still pending. At the same time, a Memo of charge dated 30.5.2013 was served upon the petitioner and the disciplinary proceeding was also initiated. It is admitted position that the charges are identical to that of the criminal case. The departmental proceeding proceeded under Bihar Government

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Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'.) The learned Single Judge has noted that the foundation for the disciplinary proceeding, as would be manifest from the charge-sheet, rests upon the report of the Superintendent of Police, Vigilance. However, the enquiry was conducted, the report was made against the petitioner and, ultimately, a punishment of dismissal was imposed upon him. An appeal was also preferred before the Appellate Authority which was also dismissed.

It appears from the judgment of the learned Single Judge that it was urged on behalf of the petitioner that the finding of the Enquiry Officer is resting on no evidence and, thereafter, a finding has been recorded by the learned Single Judge as under:

> *"Undisputedly no evidence was led during the course of enquiry inasmuch as neither the complainant was examined on his allegation nor the Superintendent of Police, Investigation Bureau was examined on the report. The entire exercise has been mechanical. Even though a finding in the disciplinary proceeding rests on preponderance of probability and on the strength of evidence led but in the present case, evidence is completely absent in absence of examination of the two persons i.e. the complainant and the Superintendent of Police, Investigation Bureau. It is a case where the finding by the Enquiry Officer, the Disciplinary Authority and the Appellate Authority is resting on no evidence."*

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Now the issue is as to whether in view of complete lack of evidence, inflicting major punishment of dismissal from service or for that reason any punishment would be available to the Disciplinary Authority? Can a prudent person come to the conclusion that, even in the absence of any evidence, charges can be assumed to be proved against a person? The answer has to be in negative. If the charges are framed then those have to be proved by the Department by leading evidence either oral or documentary whatever before the Enquiry Officer.

In the present case, admittedly no evidence had been led, however, the absence of examination of two persons, namely, the complainant and the Superintendent of Police, Vigilance Investigation Bureau would give a fatal blow to the entire proceeding as everything is based upon their report and the criminal trial is still pending. We wonder, in the absence of such, how a finding of proving of charges could have been recorded by the Enquiry Officer and further how, upon such enquiry, punishment of dismissal from service could have been inflicted upon the delinquent which is extreme punishment.

It is well settled that while considering an *intra* court appeal, the Division Bench, if it finds that there are two views possible and one has been taken by the learned Single Judge,

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even in such cases the Division Bench refrains from interfering into the orders or judgments passed by the learned Single Judge. However, in the present case, there is no option before us than to concur with the finding of the learned Single Judge. Thus, we find no reason warranting interference in the matter.

By way of last resort, learned counsel appearing for the State has stated that the learned Single Judge has recorded a finding that such discrepancies, which have been discussed as above, have rendered the entire proceeding and enquiry report illegal. However, he has quashed the enquiry report and the order passed by the disciplinary as well as the Appellate Authority, but he has not quashed the memo of charges. Thus, it is contended that in the absence of that, he could not have directed to reinstate the writ petitioner along with all consequential reliefs.

Ordinarily, the aforesaid submission may look lucrative but on deeper scrutiny, we do not find any reason to approve that. Of course, learned Single Judge has not said that charges are also being quashed but he has stated in the preceding paragraph that the entire proceeding, including the enquiry report, is rendered illegal and that entire proceeding would definitely bring the charges framed in the proceeding also within it and this is the reason why he has stated in the last sentence of the order that this

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order, however, would not preclude the authorities from proceeding afresh but in accordance with law. It is well settled that the disciplinary proceeding initiates from the stage of framing of charges, thus, when the learned Single Judge has said in his order that the facts and circumstances of this case, which have been detailed above, have rendered the entire proceeding illegal, it would be very difficult to uphold that he has approved the charges as the entire proceeding would definitely include the framing of charges also.

Apart from the above, we have also examined the memo of charges which has been appended as Annexure- 10 to the writ petition. It is admitted position which would be apparent from Annexure-7, the order passed by the Registrar, Co-operative, that a disciplinary proceeding was contemplated under the Rules.

There is another reason for not upholding the charges. Under Rule 17 of the Rules, procedure for imposing penalty has been provided. Rule-17(3) lays down as under:

> *17(1) xxxxxxxxxxxxxxxx*
> *17(2) xxxxxxxxxxxxxxxx*
> *17(3) Where it is proposed to hold an enquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-*

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(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charges;

(ii) a statement of imputations of misconduct or misbehaviour in support of each article of charge, shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charges are proposed to be sustained".

17 (4) xxxxxxxxxxxxxx

From the aforesaid provision it emanates that whenever there is a proposal to hold an enquiry against a government servant, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charges. A statement of imputations of misconduct or misbehaviour in support of each article of charge shall contain a statement of all relevant facts including any admission or confession made by the government servant, a list of document relied upon and a list of such witnesses by whom the articles of charges are proposed to be sustained. We see none of them having brought on record and on that count also the memo of charge has to be quashed.

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In the result, we hold that the judgment rendered by the learned Single Judge which is in issue in this appeal cannot be faulted with and, accordingly, this appeal is dismissed.

(Dr. Ravi Ranjan, ACJ)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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