

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1582 of 2014

In
Civil Writ Jurisdiction Case No.17873 of 2007

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1. The State of Bihar
 2. The Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna
 3. The Secretary, Department of Health, Government of Bihar, Patna
 4. The Deputy Secretary, Department of Health and Family Welfare, Government of Bihar, Patna
 5. The Under Secretary, Department of Health, Government of Bihar, Patna
- Appellant/s

Versus

Dr. Nand Kishore Nawal S/o Late Nagendra Prasad Singh Resident of
Suwash Niwas, Moh. Rikabganj, P.S. Tekari, District - Gaya

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raj Ballabh Prasad Yadav, A.A.G. - XI Mr. Dinesh Maharaj, AC to A.A.G. - XI
For the Respondent/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Vikas Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 22-03-2018

Heard learned counsel for the State-appellants and the private-respondent.

Appeal has been preferred under Letters Patent by the State against the order, dated 17.07.2013, passed by the Learned Single Judge, who allowed the writ application of the private-respondent; quashed the order of punishment; and ordered that he be reinstated in service with all consequential benefits.

For the so called charges of omission and commission related to the year 1990-1992, a departmental proceeding was initiated



against the private-respondent only in the year 2005 and on the basis of finding of the Enquiry Officer, an order of dismissal was passed.

The allegation made in the memorandum of charges was that the private-respondent had placed orders for purchase of medicines from what is known as M.S.D., Kolkata, a government organization, at inflated rates, despite being no valid requirement or the power, having been vested in the private-respondent.

Charges were brought against the private-respondent supposedly on 15.11.2002, but nothing was done by way of initiation of departmental proceeding. However, on 14.06.2003, the private-respondent was suspended and again a communication was made about initiation of a departmental proceeding. On 14.06.2004, the private-respondent was directed to answer the charges of the irregularities committed by him in purchase of medicines and why a departmental proceeding should not be initiated against him. Explanation was offered and then the so called departmental proceeding was initiated on 21.05.2005.

The Learned Single Judge having taken note of the events tried to seek explanation from the appellant-State authorities as to why it took them so long to initiate a proceeding in relation to an omission and commission related to the year 1990-1992 and as to



why even after the so called discovery of the events in the year 1998, the proceeding was finally initiated in the year 2005.

Taking cue from a series of decisions rendered by the Hon'ble Apex Court, which is the case of *State of Madhya Pradesh Vr. Bani Singh, reported in [AIR 1990 (SC) 1308]* and *the State of A. P. Vs. N Radhakrishnan [(1998) 4 SCC 154]*, the Learned Single Judge held that extraordinary delay in initiation of proceeding on a stale charge, amounts to unfairness and delay causes prejudice to the charged officer and violates Principles of Natural Justice, unless it can be demonstrated that the charged officer was the reason for such delay. Courts have intervened and quashed such stale proceedings.

Not only this, the Learned Single Judge also took note of a Single Judge's decision, dated 27.08.2008, rendered in the case of *Dr. Suresh Jha Vs. The State of Bihar & Ors.*, which was *C.W.J.C. No. 11488 of 2005*. Similar view was taken and the writ application was allowed on 27.08.2008; the punishment order stood quashed; and, therefore, the Learned Single Judge also went by the ratio of the decision rendered in identical situation in the case of Dr. Suresh Jha (supra).

Not only this, there are other issues also, which were raised on behalf of the private-respondent, which are that no evidence



had been led during the course of enquiry to prove the charges. Only on the basis of certain documents, which was not even proved, the Enquiry Officer came to a conclusion that the charges stand proved. No witnesses were called. The Enquiry Officer himself became a witness and on the basis of the so called documentary evidence, which primarily related to a Circular of the State in relation to placing orders for purchase of medicines from M.S.D., Koklata, the private-respondent was held guilty and punishment of dismissal was imposed.

Obviously, there are things amiss in the manner in which the State-authorities have dragged their feet over the matter, and to make things worse, the manner in which the disciplinary proceeding has been conducted without following any of the process or procedure laid down in the CCA Rules of Bihar. A sham of an enquiry or a formality of an enquiry cannot meet the needs of a fair and objective enquiry without giving fair opportunity to the delinquent to prove his case. It is also an onerous duty cast upon the employer to ensure that the charges brought against the delinquent stand established by due procedure of law. Since nothing of this kind seems to have emerged to have been followed in the present case, the Learned Single Judge rightly came to a conclusion that initiation of a departmental proceeding



after more than 12 to 13 years of the so called event, had caused serious prejudice to the private-respondent, coupled with the fact that no proper departmental enquiry was held or conducted and only a begotten kind of enquiry report was used for issuance of punishment of dismissal. The Court was left with no option but to allow the writ application and quash the order of punishment of dismissal.

Since none of these aspects have been seriously contested or disproved as to the finding, both on the factual aspect as well as the principle of law on behalf of State during the course of argument, we do not feel that a case is made out for interfering with the impugned order passed by the Learned Single Judge, dated 17.07.20013.

The appeal, therefore, has no merit and is fit to be dismissed. It is dismissed, accordingly.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

skm/-

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