IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.435 of 2016
In
Civil Writ Jurisdiction Case No.3194 of 2014

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1. The State Of Bihar Through The Chief Secretary Govt. Of Bihar, Patna
2. The Principal Secretary, General Administration, Govt. Of Bihar, Patna
3. The Principal Secretary, Urban Development Department, Govt. Of Bihar, Patna
4. The Secretary, Urban Development Department, Govt. Of Bihar, Patna
5. The Municipal Corporation Through Additional Municipal Commissioner (Estt.) Bihar, Patna
6. The Additional Secretary, General Administration, Govt. Of Bihar, Patna

... ... Appellant/s

Versus

Jitendra Kumar Sigh S/o sri Sitaram Singh At Present Posted As Adm Patna (Department Enquiry) Patna Collecteriate, Patna, P.S. Gandhi Maidan, District - Patna

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. P.K.Verma, AAG-3
with Mr. Rakesh Kr. Srivastava, AC to GP-15

For the Respondent/s : Mr. Y.V. Giri, Sr. Advocate
with Mr. Rajeev Kumar Singh
Mr. Prem Prakash, Advocates

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 20-06-2018

The State of Bihar has preferred this appeal under Clause 10 of the Letters Patent of this Court feeling aggrieved by the judgment and order, dated 18.12.2015, passed by a learned single Judge of this Court in CWJC No. 3194 of 2014, whereby the learned single Judge has set aside the notification contained in Memo No. 521, dated 15.01.2014 along with the charge-sheet in Prapatra "Ka" issued for initiation of departmental proceeding against the respondent/writ petitioner, mainly on the ground of delay in initiation of departmental proceeding. The writ application filed by the respondent has thus, been allowed by the learned single Judge, relying on Supreme Court's decisions in case of ***State of Madhya Pradesh Vs. Bani Singh,*** reported in ***1990 Supp SCC 738, State of A.P. Vs. N. Radhakishan,*** reported in ***(1998) 4 SCC 154*** and ***P.V. Mahadevan Vs. MD. T.N. Housing Board,*** reported in ***(2005) 6 SCC 636.***

2. The respondent No. 1, who was the writ petitioner, was at the relevant point of time a member of Bihar Administrative Service and has now been promoted to Indian Administrative Service. The allegation against the writ petitioner relates to an order, dated 12.04.1996, which he had passed while working as Assistant Administrator, New Capital Circle, Patna Municipal Corporation (PMC in short), in an appeal proceeding for determination of municipal tax. For the purpose of assessment of municipal tax of a holding, the annual rental valuation was initially assessed as Rs. 43,68,374.10. The

assessee had filed statutory appeal against the said assessment. The respondent, though not the appellate authority, was asked by the competent authority to dispose of the objection of the assessee in appeal. In that process the writ petitioner found the annual rental valuation of the building to be Rs. 6,95,700/-. For the purpose of arriving at the said conclusion, the respondent relied on an earlier order dated 30.11.1994, passed by the Administrator, PMC, wherein it was held that the building was not situated on the main road, rather the same was situated on R. Block Road, which was not categorized as the principal main road.

3. We will be referring to the relevant facts in detail at appropriate place.

4. It is the case of the State that the fact of wrong valuation came to light in 2005 by the Executive Officer of Nutan Rajdhani (North Anchal) on a finding that the said holding appertaining to M/s Sujata Hotel was situated on the 'Principal Main Road' and the respondent had wrongly reduced the annual rental valuation of the said holding to Rs. 6,95,700/- by order dated 12.04.1996, treating it to be situated on 'other Road'. The Additional Commissioner-cum-Chief Accounts Officer of P.M.C. thereafter, wrote a letter to the Secretary

Urban Development Department suggesting action against the respondent/writ petitioner. In response to the said letter, dated 15.11.2005, the Urban Development Department in its letter, dated 21.11.2005 addressed to the Commissioner-cum-Chief Executive Officer, PMC, recorded that the allegation against the respondent of committing irregularities in the matter of fixation of holding tax in respect of Chankya Hotel and Chankya Tower stood confirmed and proved. The Department accordingly, asked the Commissioner to make available a charge-sheet in Prapatra "Ka" against him on the basis of available materials and evidence, for the purpose of initiation of a departmental proceeding against the respondent/writ petitioner. By subsequent notification, dated 30.12.2005, in view of the aforesaid development, the Urban Development Department, Government of Bihar, repatriated the petitioner to his parent Department, i.e., Personnel and Administrative Reforms Department, Govt. of Bihar. Feeling aggrieved, the respondent/writ petitioner approached this Court by filing CWJC No. 399 of 2006, challenging the notification dated 30.12.2005, mainly on the ground that stigma had been cast upon him without holding any enquiry. This Court by order dated 20.01.2006, passed in CWJC No. 399 of 2006, while allowing the State of Bihar, time to file counter affidavit, stayed the operation of the notification dated 30.12.2005. This Court observed that, in the meanwhile, there shall be stay of the impugned notification and the petitioner shall be allowed to function in the Patna Regional Development Authority which was successor body of the PMC. Be it noted that this Court had stayed the effect of notification by the said order, dated 20.01.2006, whereby the respondent/writ petitioner was sought to be transferred on the ground of proved misconduct. There was no restraint order passed by this Court against the initiation of departmental proceeding against the petitioner. Subsequently, a charge-sheet was issued vide Memo No. 13082 dated 28.12.2006, by Personnel and Administrative Reforms Department containing the charge of irregularity in assessment of annual rental valuation of the holding for the purpose of determination of the holding tax. The writ petitioner submitted his reply to the notice through letter dated 25.01.2007, addressed to the Secretary, Personnel and Administrative Reforms Department. Nothing happened thereafter in connection with the departmental proceeding against the respondent/writ petitioner. No Inquiry officer was appointed. Nearly seven years after submission of the petitioner’s reply to the charge, sent to him in Prapatra (Ka), the Additional Municipal Commissioner (Establishment) of the PMC wrote a letter addressed to the Secretary, Urban Development Department, Government of Bihar, dealing with the explanation submitted by the respondent/writ petitioner dated 25.01.2007 (wrongly mentioned as 25.01.2009). He pointed out in the letter that under the Patna Municipal Corporation Fixation of Annual Rent Rules, 1993, Birchand Patel Path and Harding Road had been notified as Principal Main Road. In view of the provisions present in the Rent Fixation Rules, 1993, the annual rental value of the holding was assessed by the Assessing Authority as Rs. 43,68,374.10 which was reduced by the order passed by the respondent in appeal to Rs. 6,95,700/-. He mentioned that the respondent had wrongly relied on an earlier order passed by the Municipal Commissioner in Appeal Case No.02/1993 which was passed under Old Rules and the said order ought not to have been followed by the respondent while deciding the appeal. He further pointed out that because of incorrect fixation done by the writ petitioner, the PMC had to incur loss of Rs. 2,66,768/- per year right from 01.01.1994. He thereafter, blamed the Municipal Commissioner, for not passing any order on the calculation of annual rental valuation done by the writ petitioner. It has also been pointed out that the said holding has been treated to be situated on Main Road by the Executive Officer, Nutan Rajdhani Anchal in his assessment done on 25.11.2010. The appeal preferred against the said assessment made by the Executive Officer has been dismissed, the letter pointed out. Discussing thus, the Additional Commissioner opined that the explanation submitted by the respondent/writ petitioner was not acceptable. Based on the opinion of the Additional Municipal Commissioner, P.M.C, the Urban Development Department, Government of Bihar recommended to the General Administrative Department, Bihar rejection of the explanation submitted by the writ petitioner. Few days thereafter through the resolution dated 15.01.2014, the General Administrative Department, Govt. of Bihar initiated departmental proceeding against the writ petitioner under Bihar Government Servant (Classification Control & Appeal) Rules, 2005 with the appointment of an enquiry officer and issuance of charge-sheet against him. It seems that the issue for initiation of departmental proceeding was suddenly raised in 2014, when the case of the writ petitioner for his promotion to Indian Administrative Service was under process. Aggrieved by initiation of departmental proceeding, he approached this Court by filing writ application giving rise to the present CWJC No. 3194 of 2014. When the matter was taken up by a learned single Judge of this Court on 11.03.2014, this Court passed an interim order to the following effect:-

> *"A counter affidavit has been filed on behalf of the respondents.*
>
> *List this matter for admission.*
>
> *During the pendency of this writ application, the departmental proceeding initiated by Resolution dated 15.01.2014, as contained in Annexure-1, shall remain stayed.*
>
> *Pendency of this writ application shall not be taken as a ground by the respondents of any concerned authority to refuse consideration of promotion to the petitioner."*

5. This is to be noted that there were three charges framed against the respondent/writ petitioner in charge-sheet *Prapatra* (Ka), which is at Annexure-13 of the supplementary affidavit filed on behalf of the appellants. The gist of the charges against the respondent/writ petitioner are as follows:-

(i) The respondent had passed the appellate order on 12.04.1996 as authorized by an order issued by the Administrator, PMC vide memo No. 122 dated 13.01.1996, fixing Rs. 6,95,700/- as the annual rental value of the holding in question, describing the holding to be situated on “other Road” though the holding was in fact situated on a road which was notified as the ‘Principal Main Road’ under 1993 Rules on the basis of which annual rental value was assessed as Rs. 43,68,374.10, originally by the assessing authority.

(ii) He, while passing the said order dated 12.05.1996, relied on an earlier order passed in Appeal Case No. 02 of 1993, when classification of the Road was not notified. The assessment of annual rental value of the holding treating it to be situated on “other Road is irregular and against the rules”.

(iii) By order as contained in memo No. 122 dated 13.01.1996, the Assistant Administrator(s) of the respective area were authorized to consider objection in the matter of implementation of the new municipal tax system but the respondent/writ petitioner passed the order on 12.04.1996 as an appellate authority.

6. Learned single Judge taking into account the delay

in initiation of departmental proceeding has recorded his opinion in the impugned order that there was absolutely no satisfactory explanation for the inordinate delay in issuing charge memo, for which the respondent was in no way to be blamed. In the opinion of the learned single Judge, initiation of departmental proceeding 18 years after the alleged incident is unfair, unreasonable in the light of the Supreme Court's decisions in case of (i) ***State of Madhya Pradesh Vs. Bani Singh*** (supra), (ii) ***State of A.P. Vs. N. Radhakishan*** (supra), and (iii) ***P. V. Mahadevan Vs. MD. T.N. Housing Board*** (supra).

7. After having held so, the impugned action of the respondent of initiation of departmental proceeding with the issuance of charge-sheet through resolution issued vide memo No. 521, dated 15.01.2014 along with Prapatra 'Ka' has been set aside by the judgment and order which is being assailed in the present appeal.

8. We have heard Mr. P.K. Verma, learned Additional Advocate General No.3, assisted by Mr. Rakesh Kumar Srivastava, learned AC to G.P.-15 and Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the writ petitioner.

9. Mr. P.K. Verma, learned Additional Advocate

General No.3 appearing on behalf of the State of Bihar has submitted that though there has been delay in initiation of departmental proceeding against the respondent No.1, there is sufficient explanation on record to justify the delay and learned single Judge has committed error in coming to the conclusion that there was no justifiable explanation. He submits that after the respondent No.1 submitted his reply to the notice issued to him, the Department had sought an opinion from the Patna Municipal Corporation on its acceptability. Since the Department was not getting any response from the PMC, reminders were sent seeking comments/opinion on the explanation. Only when the PMC submitted explanation, the State Government came into action. He has submitted that the charge in *Praptra* 'Ka' sent through letter dated 21.06.2006, was not charge, rather tentative opinion of the Department for initiation of departmental proceeding against respondent no.1. He has contended that the Department had thought it proper to seek the petitioner's explanation first, on the allegation, for the purpose of initiation of a departmental enquiry. The respondent's explanation was sent to PMC for seeking opinion as to whether the explanation of respondent no.1 was worth being accepted or not. Only because the State Government could not receive opinion of the PMC for taking final decision as to whether disciplinary proceeding should be initiated against respondent No.1 or not, the delay in initiation of departmental proceeding occurred. He has accordingly submitted that firstly, because the irregularities committed by respondent No.1 in 1996 was initially not known and it surfaced only in the year 2005, action could not be taken against him, soon after the date of misconduct. Secondly, once the irregularity was detected, initiation of departmental proceeding took time because of the reasons which have already been explained, he contends. According to him, delay itself cannot be a ground for the Court exercising power under Article 226 of the Constitution of India to interfere with the initiation of the departmental proceeding itself. He has accordingly submitted that the Supreme Court's decisions in case of ***State of Madhya Pradesh*** (supra), ***State of A.P.*** (supra) and ***P.V. Mahadevan*** (supra), have no application in the facts and circumstances of the present case and could not have been invoked by the learned single Judge for interfering with the departmental proceeding.

10. Mr. Y.V. Giri, learned Senior counsel appearing on behalf of the writ petitioner, on the other hand, while justifying the decision of the learned single Judge contends that

the decision of the learned single Judge is based on the law propounded by the Supreme Court in case of ***State of Madhya Pradesh* vs. Bani Singh** (supra), ***State of A.P. vs. N. Radhakishan*** (supra) and ***P.V. Mahadevan vs. MD. T.N. Housing Board*** (supra). Relying on Supreme Court's decision in case of ***N. Radhakishan*** (supra) that unexplained delay in conclusion of the departmental proceeding itself is an indication of prejudice caused to the respondent no.1, he submits that the impugned judgment and order is in tune with the position so settled. He would further contend that even on reading of the charge framed against the writ petitioner, no misconduct is made out against him, in the absence of any allegation of ulterior motive behind his decision of assessment of annual rental value of the holding.

11. The facts which have been noted by the learned single Judge are not at all in dispute. In the writ proceeding, a counter affidavit was filed on behalf of the respondents which we have carefully perused. Following were the averments made in paragraphs 5 to 11 of the counter affidavit:-

> *"5. That shorn of unnecessary details, it is relevant to submit that a Charge Sheet was received from the Urban Development*

Department in Prapata "Ka" for service to the petitioner, the then Assistant Administrator of Nutal Rajdhani Anchal, P.M.C., Patna.

6. That in pursuance to the same, an explanation was sought from the petitioner vide memo No. 13082 dated 28.12.2006 issued under the signature of the Additional Secretary, Personnel and Administrative Reforms Department, Bihar, with regard to the alleged charges.

7. That on receipt of explanation from the petitioner, the instructions and comments of the Secretary, Urban Development Department was sought on behalf of the Personnel and Administrative Department, Bihar, Patna vide Letter No. 7842 dated 2.03.2007.

8. That the comments of the Urban Development Department was received by the General Administrator Department, Bihar vide Letter No. 14 dated 2.01.2014.

9. That on receipt of the comments from the Secretary, Urban Development Department, the matter was examined in the General Administrative Department and it was *found that the then Administrator, Patna Municipal Corporation had authorized all the Assistant Administrators of Patna Municipal Corporation, vide Memo No. 122 dated 13.01.1996 for disposing the objections received in the light of New Taxation System, in their respective areas and it was also directed that after the disposal of the objections, the same were to be produced before the Administrator, Patna Municipal Corporation, for information.*

10. That, thus after considering all the facts and circumstances, the disciplinary authority decided to initiate departmental proceeding against the petitioner for alleged irregularities in fixation of annual rent of Sujata Hotel Pvt. Ltd.

11. That it is further relevant to state that Sujata Hotel Pvt. Ltd. Is situated on Bir Chand Patel Path, which was specifically categorized as Principal Main Road vide Notification issued by the Urban Development Department, but petitioner deliberately disposed the objection by considering the Hotel to be falling within the *category of other roads."*

12. It is clear from the said counter affidavit that there was no explanation offered by the State respondents for delay in initiation of the departmental proceeding. The State of Bihar filed an application being I.A. No. 5655 of 2014 for vacating the order of stay passed by this court by order dated 11.03.2014. In the said application a plea was taken that because Personnel and Administrative Reforms Department failed to receive any comments from the Urban Development Department on the explanation submitted by the writ petitioner, the delay in initiation of the departmental proceeding occurred. There is another counter affidavit filed in the writ petition on record on behalf of Respondent Nos. 3 and 4 stating that that because the Urban Development Department could not receive any comment on the petitioner's explanation, the Urban Development Department could not send its comment to the Personnel and Administrative Reforms Department on the petitioner's explanation in response to the show cause notice on the charge dated 28.12.2006. The fact remains that the petitioner had filed his response timely. The delay in initiation of proceeding, is thus not attributable to the writ petitioner and in view of the Supreme Court's observation in case of ***N.***

Radhakishan (supra) such delay is indication of prejudice caused to the writ petitioner.

13. In the background of the pleadings on record and in view of the fact which are not in dispute, we do not find any reason to have a different view than the one taken by the learned single Judge that there has been unreasonable delay in initiation of departmental proceeding against respondent No.1.

14. On merits, the writ petitioner is said to have passed the order exercising quasi judicial authority in the matter of fixation of annual rental value of a holding in 1996. The exercise of assessment of annual rental value by respondent No.1 was carried out in the light of an office order dated 13.01.1996 passed by the Administrator of PMC. The said order issued vide memo no. 122 dated 13.01.1996 authorized the Assistant Administrators under PMC, of their respective area to dispose of objections being raised against implementation of new municipal tax policy. The Assistant Administrators were specifically required to submit the disposal of objection before the Administrator, PMC immediately. We may, at this stage, notice the comments of Additional Municipal Commissioner (Establishment) as contained in his letter dated 02.01.2014 on the petitioner's

explanation against Prapatra 'Ka' issued on 28.12.2006. It is evident from the last sentence of sub-paragraph (Ka) of paragraph 2 of the said letter that the Additional Municipal Commissioner blamed the then Municipal Commissioner (his superior officer) of having withheld the file and of having not passed any order on disposal of objection by the respondent no.1. This is not in dispute that the final decision was required to be taken by the Municipal Commissioner on any assessment which was being done by writ petitioner, in compliance of the office order issued vide memo No. 122 dated 13.01.1996. There is no allegation against respondent no.1, of disposal of the objection in the manner he dealt as back with any ulterior motive or on extraneous consideration.

15. Mr. Giri, learned Senior Counsel, in our view, appears to be correct in his submission that even if the allegations in charge-sheet are taken to be true, no case of misconduct is made out. The Supreme Court in case of ***Union of India Vs. J. Ahmad*** reported in ***(1979) 2 SCC 286*** had proceeded to ascertain as to what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty. The Supreme Court observed that Code of conduct as set out in the Conduct Rules clearly

indicates the conduct expected of a member of the service. It would follow that the conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. The Court specifically held that a single act of omission or "error of judgment" would ordinarily not constitute misconduct. In a subsequent decision in case of ***State of Punjab Vs. Ram Singh Ex Constable*** reported in ***(1992) 4 SCC 54*** the Supreme Court explained misconduct of a Government servant for the purpose of departmental proceeding and held that misconduct is delinquency in its performance and its effect on the discipline and the nature of the duty. The court clearly held that "mere error of judgment, carelessness or negligence in performance of duty" will not constitute misconduct. Paragraph 6 of the said decision is relevant which reads as under:-

> *"6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives 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, if must be improper or wrong behaviour, unlawful behaviour, willful in character; forbidden act, a transgression of establish 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. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order."

16. Yet another Supreme Court's decision in case of ***Inspector Prem Chand Vs. Government of N.C.T. Delhi and others*** reported in ***(2007) 4 SCC 566***, considering the previous decision in case of ***Union of India Vs. J. Ahamd*** (supra) lays down held that error of judgment or negligence simpliciter is not of misconduct.

17. It is evident from the facts on record that the only allegation against the writ petitioner is of assessing annual rental value of a holding on the basis of old Rules in place of new new Rules, which had come into force in 1994. While doing the assessment, he had relied on an earlier decision of the Administrator of PMC in respect of the same

holding, which order was passed on 30.11.1994, the assessment in that case, though related to the period prior to coming into force of 1993 Rules. In the absence of any ulterior motive attributed against him, respondent no.1 could not be said to have misconducted himself. His assessment may be an error of judgment or mistake, in the absence of any allegation of ill motive, no misconduct can be said to be made out.

18. The view expressed by us finds support from the opinion expressed by the Supreme Court in a similar matter reported in ***(1999) 7 SCC 409*** (***Zunjarrao Bhikaji Nagarkar Vs. Union of India and others***), (paragraph 40 to 44).

19. Further, we have noticed the comments of the Additional Municipal Commissioner dated 02.01.2014, who has rather blamed the Municipal Commissioner for not having passed any order on the assessment done by the writ petitioner.

20. In the background of the facts noted above, in our considered view, this appeal has no merit since the judgment and order of the learned single Judge does not require any interference.

21. This appeal is accordingly dismissed.

22. All the Interlocutory applications stand disposed of.

23. The parties, shall, however, bear their own costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

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