

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1136 of 2016

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Surya Narayan Yadav Son of late Maharaj Yadav Resident of Mohalla- Gangwara,
P.S. L.N.M.U. Darbhanga, District Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Govenment of Bihar, Patna.
2. The Director, Secondary Education, Government of Bihar, Budh Marg, Patna.
3. The Regional Deputy Director of Education cum Enquiry officer, Darbhanga,
District Darbhanga.
4. The District Education officer, Madhubani.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Kripa Nand Jha

For the Respondent/s : Mr. RAM BALAK MAHTO- AG

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 11-09-2018

The present writ petition has been filed for quashing the order dated 15.09.2014, whereby and where under the disciplinary authority has imposed the punishment of 2% deduction of the pension of the petitioner herein as also for setting aside the order dated 30.11.2015 by which the appeal of the petitioner has been dismissed.

The brief facts of the case are that the respondents had initiated a disciplinary proceeding and charges were framed vide Memo dated 03.12.2007, primarily on the ground that the O.N.G.C. personnel were staying unauthorisedly in the school premises as well as the petitioner was taking extra fees, more than the one prescribed for registration and examination purposes, pertaining to the annual Madhaymic Examination, 2007. The Enquiry Officer had



conducted enquiry and submitted his enquiry report dated 13.06.2009, finding some charges to have been proved and some charges to have not been proved. Thereafter, a second show cause notice was issued to the petitioner herein and by the impugned order dated 15.09.2014, the petitioner has been inflicted with the punishment of 2 % deduction from his pension. Thereafter, the petitioner had filed an appeal and the same has also been dismissed.

The learned counsel for the petitioner has submitted that the enquiry conducted by the Enquiry Officer is vitiated and the enquiry report is fit to be ignored inasmuch as not even a single witness was examined by the prosecution for proving the charges nor any documentary evidence has been brought on record. The learned counsel for the petitioner has relied upon a judgment rendered by this Court reported in **2018(3) PLJR 329 (Anand Kumar Bardhan vs. the State of Bihar & ors.)**, paragraph nos. 4 to 10 are reproduced herein below:-

“4. The learned Senior Counsel for the petitioner has argued that the present case is a case of no evidence, which has been truly acknowledged by the inquiry officer in his inquiry report. In this regard, the learned Senior Counsel has relied upon a judgment rendered by the Hon’ble Apex Court, reported in (2009) 2 SCC 570 (Roop Singh Negi Vs. Punjab National Bank).

5. Per contra, the learned counsel for the respondents



has supported the order of punishment dated 06.09.2016 and has submitted that such type of immoral act committed by the petitioner is disgraceful and such type of person is not fit to be retained in Government service.

6. I have heard the learned counsel for the parties as also perused the materials on record.

7. At the outset, it must be stated that one has to go by the procedure required to be followed in the departmental proceeding and the evidence adduced during the course thereof and has not to be swayed away by emotions and nature of allegations. In the present case, admittedly, none of the witnesses came forward to depose during the course of the departmental proceeding despite them being requested by the Inquiry Officer repeatedly. In fact, the Inquiry Officer himself has admitted in his inquiry report that since no evidence has come forward, there is no clarity as to whether the allegations levelled against the petitioner are correct or not and the same can only be established after conclusion of the proceedings pending before the Court.

8. Thus, admittedly, the present case is a case of no evidence and in such cases, the law laid down by the Apex Court in the case of Roop Singh Negi (supra) is required to be followed. It would be relevant to reproduce paragraph nos. 14 to 23 of the said judgment rendered in the case of Roop Singh Negi (Supra) herein below:-

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been



proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

15. *We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.*

16. *In Union of India vs. H.C. Goel, it was held: (AIR pp. 369-70, paras 22-23)*

"22.The two infirmities are separate and distinct though, conceivably, in some cases, both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issue without further proof of mala fides. That is why we are not prepared to accept the learned Attorney-General's argument that since no



mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent.

23. *That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charged framed against the respondent has been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view, this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge 3 is proved against him is based on no evidence."*

17. *In Moni Shankar v. Union of India this Court held: (SCC p. 492, para 17)*

"17. The departmental proceeding is a quasi judicial



one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

18. *In Narinder Mohan Arya vs. United India Insurance Co. Ltd. whereupon both the learned counsel relied upon, this Court held: (SCC p.724, para 26)*

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. (See State of Assam v. Mahendra Kumar Das.) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See Khem Chand v. Union of India and State of U.P. v. Om Prakash Gupta.) (3) Exercise of discretionary power involves two elements (i) Objective, and (ii)



subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See K.L. Tripathi v. SBI.) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. (See Sawai Singh v. State of Rajasthan.) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subjectmatter of the charges is wholly illegal. (See Export Inspection Council of India v. Kalyan Kumar Mitra.) (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See Central Bank of India Ltd. v. Prakash Chand Jain and Kuldeep Singh v. Commr. of Police.)"

19. *The judgment and decree passed against the respondent in Narinder Mohan Arya case had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a Writ Petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasized that a finding can be arrived at by the Enquiry Officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non application of mind.*
20. *This Court referred to its earlier decision in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. to opine: (Narinder Mohan Arya case, SCC p. 729, paras 41-42).*
- "41. *We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large*



number of decisions points point that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and RBI v. S. Mani. Each case is, therefore, required to be considered on its own facts.

42. *It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it it would be lawful to do so. In RBI this Court observed: (SCC p. 116, para 39)*

'39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out.' "

In that case also, the learned single judge proceeded on the basis that the disadvantage of an employer is that such acts are committed in secrecy and in conspiracy with the person affected by the accident, stating: (Narinder Mohan Arya case, SCC p. 730, paras 44-45)

"44. ...No such finding has been arrived at even in the disciplinary proceedings nor any charge was made out as against the appellant in that behalf. He had no occasion to have his say thereupon. Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regard the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The Enquiry Officer cannot base his findings on mere hypothesis. Mere ipso dixit on his part cannot be a substitute of evidence.

45. *The findings of the learned Single Judge to the effect that 'it is established with the conscience (sic) of the Court reasonably formulated by an Enquiry Officer then in the eventuality' may not be fully correct inasmuch as the Court while exercising its power of*



judicial review should also apply its mind as to whether sufficient material had been brought on record to sustain the findings. The conscience of the court may not have much role to play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same error."

21. Yet again in *M.V. Bijlani vs. Union of India* this Court held: (SCC p. 95. para 25).

"25.Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant facts. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

22. Yet again in *Jasbir Singh vs. Punjab & Sind Bank* this court followed *Narinder Mohan Arya vs. United India Insurance Co. Ltd.*, stating:(*Jasbir Singh* case, SCC p. 570 para 12).

"12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed so to do."

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of



selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof”.

9. *From a bare perusal of the inquiry report dated 15.04.2015, it is apparent that the entire findings of the Inquiry Officer is based on no evidence. In fact, no witnesses had appeared to prove the allegations levelled by the prosecution and in fact, the Inquiry Officer himself has opined in his inquiry report that in absence of appearance of the witnesses as also in absence of any evidence being led by the prosecution, it is difficult to come to a conclusion that the charges have been completely proved as against the petitioner herein. The Inquiry Officer has further remarked that since the police officials did not appear for adducing evidence and a case, at their behest, is going on in the Court, the final decision of the Court would be binding.*

10. *In such view of the matter, the present case is a case of no evidence, hence, the department has utterly failed to prove the charges, as against the petitioner herein.”*

Per contra, the learned counsel for the respondents has submitted that there is no procedural lapse in conduct of the



departmental proceedings, hence the impugned order of punishment/appellate order does not require any interference by this Court.

I have heard the learned counsel for the parties and gone through the records of the case and I find from a bare perusal of the enquiry report dated 13.06.2009 that the entire findings of the Enquiry Officer is based on no evidence. In fact no witness had appeared to prove the allegations levelled by the prosecution. Thus the present case is a case of no evidence, hence the Department has utterly failed to prove the charges, as against the petitioner herein. Reference in this connection be had to the judgments rendered by the Hon'ble Apex Court reported in *(2009) 2 SCC 570 (Rup Sing Negi vs. Punjab National Bank)* as well as the one reported in *(2010) 2 SCC 772 (State of U.P. vs. Saroj Kumar Sinha)*.

Having regard to the facts and circumstances of the case and for the reasons discussed hereinabove, I am of the view that since the enquiry report itself is based on no evidence since no oral evidence has been led by the Department to prove the charges levelled against the petitioner, it can be safely concluded that the report of the Enquiry Officer is based on mere *ipse dixit* as also upon surmises and conjectures, not supported by any evidence, hence the same is not sustainable in the eyes of law, thus any inference drawn by the



disciplinary authority for the purposes of imposing punishment upon the petitioner herein i.e. by the impugned order dated 15.09.2014 is consequently not sustainable in the eyes of law, hence the order of punishment dated 15.09.2014 is quashed. As a result of quashing of punishment order dated 15.09.2014, the appellate order is bound to fall, hence the appellate order dated 30.11.2015 is also set aside.

The writ petition is allowed with a direction to the respondents to grant consequential benefits to the petitioner herein.

(Mohit Kumar Shah, J)

S.Sb/-

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