

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1612 of 2016

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Chhote Lal Choudhary, Son of Late Bihari Choudhary, Resident of Raushal Lal Colony, Harni Chak, By-pass Road, P.O. & P.S. - Anisabad, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Animal Husbandry & Fisheries, Bihar, Patna.
3. The Deputy Secretary to the Government, Department of Animal Husbandry & Fisheries, Bihar, Patna.
4. The Director, Department of Animal Husbandry & Fisheries, Bihar, Patna.
5. The Accountant General, Bihar, Patna.
6. Joint Secretary to the Government, Department of Animal Husbandry & Fisheries, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate
		Mr. Brisketu Sharan Pandey, Advocate
For the Respondent	:	Mr. Manish Kuamr, G.P. 4
For the A.G.	:	Mr. S. M. Ehetesham, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 02-08-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following
reliefs:

“(i) For issuing writ/writs, order/orders including the writ of mandamus and certiorari and thereby quashing the order dated 28.09.2015 issued from the signature of respondent no. 2 whereby and whereunder the representation given by the petitioner in the light of order dated 09.12.2013 passed in CWJC No. 12566/2006 has been rejected. The Hon’ble Court upon quashing the aforementioned order dated 28.09.2015 may be pleased to direct the respondents to release the post retiral benefit of the petitioner to which the petitioner would have been entitled in case the order dated 21.05.2005 and 28.09.2015 would not have



been enforce.

(ii) Further the Hon'ble Court may be pleased to hold that the respondents have erred in withholding the post retiral benefit i.e. 10% pension, complete amount of gratuity and the earned leave as in similar circumstances, another similarly situated person namely Dr. Rajeshwar Prasad Yadav has been given a lesser punishment of withholding of 10% of pension and 50% of gratuity only.

(iii) Further the Hon'ble may direct the respondents to give similar treatment to the petitioner to that of Dr. Rajeshwar Prasad Yadav who in fact had committed a graver misconduct and was yet given a lighter penalty. The petitioner may be considered on the ground of quantum of punishment and as such his post retiral benefit may be released in the same way as in the case of Dr. Rajeshwar Prasad Yadav.

(iv) Further the Hon'ble Court may hold that the impugned order dated 28.09.2015 has been issued without application of mind and with a pre-conceived notion to uphold the earlier decision of the respondents.

(v) The Hon'ble Court may be pleased to hold that the impugned order has not considered the quantum of punishment for which the representation in the light of order dated 09.12.2013 passed in C.W.J.C. No. 12566 of 2006 was made.

(vi) That Hon'ble Court may pass any other order/orders which it may deem fit in the facts and circumstances of the case and within the ends of equity justice and good conscience."

3. At the very outset, the Court would record its deep disappointment at the manner in which the counter affidavit has been filed on behalf of the State (respondent no. 2). The same is thoroughly inadequate and in fact has absolutely no substance as nothing of substance has been stated in the same. Thus, the Court has no hesitation to record that the proceedings have been taken very



casually by the authorities for reasons best known to them.

4. Be that as it may, upon hearing learned counsel for the parties, the Court does not feel the necessity to keep the matter pending and accordingly, it has been finally heard.

5. The petitioner superannuated as Regional Director in the Animal Husbandry Department and during his service period, he was subjected to departmental proceeding. As per the memo of charges, the petitioner was alleged to have appointed 27 persons on Class-IV post and 8 persons on Class-III post illegally; misused Government funds on account of such illegal appointment; attempted to hide the illegal appointments; allowed withdrawal of salary and allowance by employees who were in excess of the sanctioned strength and giving promotion to the persons who were illegally appointed. In the enquiry, the petitioner was found guilty of all the charges and accordingly was visited with the punishment of stoppage of 10% pension and full gratuity and encashment of unutilized earned leave. The petitioner moved the Court against the said order in C.W.J.C. No. 12566 of 2016, which was allowed by order dated 09.12.2013 and the matter was remanded to the Secretary, Department of Animal Husbandry and Fisheries, Bihar, Patna for fresh consideration with regard to the quantum of punishment. The same was in the background of the punishment awarded to one Dr.



R.P. Yadav, who was also posted as Regional Director, Animal Husbandry Department, though at a different place. Against him, the allegation was of appointing 43 persons on Class-IV post and 60 persons on Class-III post; misuse of Government fund on such illegal appointment and attempt to hide such illegal appointment. In terms of the order dated 09.12.2013, the matter was reconsidered by the authorities and by impugned order dated 28.09.2015, the initial order was maintained. The same is under challenge in the present writ application.

6. Learned counsel for the petitioner submitted that once there was a specific order of the Court remanding the matter for reconsideration on the point of quantum of punishment, the same punishment could not have been retained by the authorities. It was submitted that the impugned order is in fact contemptuous to such extent. Learned counsel further submitted that the estimated financial loss due to the act of the petitioner would be about Rs. 8,25,000/- per month, whereas about Rs. 40,00,000/- per month in the case of Dr. R.P. Yadav, and in his case only 10% pension and 50% of gratuity has been withheld and payment of full unutilized earned leave has been made. Learned counsel submitted that there cannot be discrimination in award of punishment between two similarly placed delinquents based on similar charges. Learned



counsel submitted that the essence of the charges being similar, the extra two charges are only incidental and cannot be said to be of a nature which would put the charges against the petitioner on a different footing than what was levelled against Dr. R.P. Yadav. Finally, learned counsel submitted that the charges against the petitioner and Dr. R.P. Yadav being substantially same, at least with regard to gratuity, similarity was required to be shown by the authorities and they ought not to have withheld 100% of the same.

7. Learned counsel for the State submitted that the order impugned is well discussed and further that the extra two charges against the petitioner were not in the memo of charges against Dr. R. P. Yadav.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ petition.

9. The argument of learned counsel for the petitioner was based on the order dated 09.12.2013 in C.W.J.C. No. 12566 of 2006, by which the matter was ultimately remanded to the authorities for considering the quantum of punishment in view of the discussions made in the order. After going through the entire order, the Court finds that the two extra and distinct charges against the petitioner have not been noticed by the Court and, thus, in such background,



the Court came to the conclusion that there is striking similarity between the case of the petitioner and Dr. R.P. Yadav, which is contrary to the records, as the entire charges against Dr. R.P. Yadav were also charges against the petitioner, but with the distinguishing factor that two extra charges i.e., of making payment of salary and allowances to employees who were beyond the sanctioned strength and giving promotion to illegally appointed persons, were not charges against Dr. R.P. Yadav. The law with regard to judicial review in departmental proceedings being now settled and limited to the procedural aspect, the Court would not substitute its view with regard to the quantum in place of the views of the Disciplinary Authority. The same is permissible only when the quantum is shocking to the conscious of the Court and in cases where similarly situated delinquents are meted out different punishments. In the present case, Dr. R.P. Yadav, was similarly situated only with regard to the initial three charges whereas the petitioner had further two charges against him and the same also have been proved in the enquiry and more importantly, before the Court in C.W.J.C. No. 12566 of 2006, there is any denial with regard to the complicity of the petitioner in relation to the charges levelled against him and the only ground taken was parity with Dr. R.P. Yadav. When in the enquiry report, all charges have been found to be proved against the



petitioner and not interfered with by the Court earlier, coupled with the fact that against Dr. R.P. Yadav, the charges were limited to only three out of the five against the petitioner, would clearly be a rational and valid ground for the authorities to take a different view and pass different order of punishment. Once on the procedural side, the Court has not found any illegality or irregularity, the only point of interference could have been the punishment awarded to identically situated delinquent.

10. In the present case, the Court on the earlier occasion has been persuaded on the ground that charges were similar without noticing the fact that two additional charges which were equally serious in nature were exclusively against the petitioner and not Dr. R.P. Yadav. Thus, when on remand, the authorities have highlighted such difference, this Court while considering their stand, does not find that the same is arbitrary, illegal or perverse to warrant any interference.

11. For the reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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