

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4645 of 2013

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SARVESHWAR SAH S/O LATE NAND LAL SAH RESIDENT OF VILLAGE-
MALHELI, P.S- BARARI,(PRESENT SAMELI) DISTRICT- KATIHAR.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. THE PRINCIPAL SECRETARY, PANCHAYATI RAJ DEPARTMENT,
GOVERNMENT OF BIHAR, PATNA.
3. THE COMMISSIONER, PURNEA DIVISION, PURNEA.
4. THE DISTRICT MAGISTRATE, DISTRICT- KATIHAR.
5. THE DEPUTY DEVELOPMENT COMMISSIONER, DISTRICT-
KATIHAR.
6. THE ADDITIONAL COLLECTOR (L.C.)-CUM- ENQUIRY OFFICER,
KATIHAR
7. THE DISTRICT PANCHAYAT RAJ OFFICER, DISTRICT- KATIHAR.
8. THE BLOCK DEVELOPMENT OFFICER, KATIHAR.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Suresh Prasad Sah @ Baranwal, Adv & Mr. Dhirendra Kumar Jha, Adv
For the Respondent/s	:	Mr. Ashish Kumar Lal AC to GA-5.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 20-04-2018

Heard learned counsel for the parties

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 21.01.2013(Annexure-5), by which the District magistrate, Katihar, respondent no. 4, had dismissed the petitioner from service as Panchayat Secretary.

3. Briefly stated, the facts of the case of the petitioner is that he was working as Panchayat Secretary of the Gram Panchayat Raj-Dalan East, Katihar Block in Katihar district. A departmental proceeding was initiated against him and Prapatra



(क) was issued in which two charges were framed against the petitioner. Charge No. 1 related to withdrawal of Rs. 4,06,000/- in stead of Rs. 6000/- from the head of honorarium of teachers in his own name and Charge No. 2 related to deposit of money in the account of teachers without signature of Mukhiya.

4. The petitioner was placed under suspension vide order dated 26.12.2011 passed by the District Magistrate, Katihar for the allegation of illegal withdrawal of salary of teachers. His headquarter was fixed at the office of S.D.O. Katihar and the Additional Collector (L.C), Katihar, was made the Enquiry Officer and the Block Development Officer, Katihar was made the Presenting Officer.

5. A criminal case was also instituted against the petitioner for identical charge being Katihar Muffasil P.S. Case No. 128 of 2011 under Section 409 and 420 of the Indian Penal Code. After investigation police has submitted chargesheet on 31.12.2011 against the petitioner. There is no bar in continuing departmental proceeding against charges for which criminal case has also been instituted and both proceedings can continue simultaneously.

6. The petitioner was issued show cause notice dated 17.04.2012 and petitioner submitted his reply to the show cause



to the Enquiry Officer. Second show cause notice was also issued to the petitioner on 20.12.2012 along with enquiry report. In his reply to the second show cause notice, petitioner categorically denied of any misappropriation of fund.

7. The disciplinary authority on considering the materials available on record passed the order dated 21.01.2013 dismissing the petitioner from service. It has been submitted on behalf of the petitioner that no procedure as prescribed under the Bihar Government Servant (Classification, Control & Appeal) Rules-2005, was followed in awarding the extreme punishment of dismissal from service.

8. No evidence was adduced either documentary or oral before the Enquiry Officer and Enquiry Officer on the basis of no evidence has found the charges to be proved against the petitioner. Petitioner had been dismissed from service only on the basis of show cause notice and reply submitted by the petitioner in the departmental proceeding.

9. On the complaint made by some teachers before the Deputy Development Commissioner, Katihar. Preliminary enquiry was conducted by the Block Statistical Officer and same was submitted to Deputy Development Commissioner on 29.10.2011 in which it was found that the amount had been



withdrawn by the Mukhiya and the Panchayat Secretary, and same was illegal and also with criminal intent.

10. The copy of said preliminary enquiry on the basis of which decision to start departmental proceeding against the petitioner was taken was not supplied to the petitioner. The Mukhiya of the Panchayat was not examined by the Enquiry Officer but his letter written to the Senior Deputy Collector, Katihar, has been taken into consideration while passing the order of dismissal against the petitioner.

11. The disciplinary authority has passed the orders on the basis of materials which were never placed before the Enquiry Officer during enquiry and on extraneous materials the District Magistrate has passed the order, as such the order passed by the Disciplinary Authority is not sustainable as serious prejudice has been caused to the petitioner due to non supply of materials on the basis of which District Magistrate has passed the order. The reports relied by District Magistrate, Katihar was not furnished to the petitioner on the basis of which extreme punishment of dismissal has been passed.

12. A counter affidavit has been filed on behalf of the respondents, in which it has been stated that petitioner was proceeded against for two charges as contained in Annexure-1



of writ petition, which are as follows.

“a. For withdrawing of the amount of teachers in his own name and withdrawing of Rs. 406000/- instead of Rs. 6000/-, as such making false transaction.

b. Deposition of money straightway into the account of teachers without getting the signature of Mukhiya.”

13. It has been further stated in the counter affidavit that petitioner was put under suspension and Additional Collector, Katihar, was appointed as Enquiry Officer in which he found petitioner guilty of both the charges and submitted his enquiry report to the District Magistrate, who is the Disciplinary Authority.

14. Petitioner was issued second show cause notice by the District Magistrate along with enquiry report and petitioner submitted his reply against the finding of the Enquiry Officer to the District Magistrate, Katihar, as contained in Annexure-4 of the writ petition.

15. The Enquiry Officer has found charge no. 1 to be proved to the extent that Rs. 4,06,000/- was withdrawn from the bank by the petitioner which were the salary to be paid to the panchayat teachers but has disbelieved any interpolation in the cheque and found that there is joint signature of Mukhiya and



Panchayat Sachiv (petitioner). Regarding second charge, it has been held by the Enquiry Officer that petitioner deposited the amount in the bank without signature of Mukhiya and whatever amount was withdrawn, same was deposited but he kept the amount in his possession for about a month, which stands proved. However, for what reasons amount was kept by him for one month is not known.

16. The District Magistrate, passed the impugned order dated 04.01.2013 dismissing the petitioner from service in which he has considered the report of Block Statistical Supervisor, Katihar, report of Deputy Development Commissioner, Katihar and explanation submitted by Poonam Devi, Mukhiya and lastly the report submitted by the Enquiry Officer and on the basis of such reports, he found the charges to be proved against the petitioner and has found that both the charges against the petitioner stands proved and petitioner had made interpolation in the cheque amount Rs. 6000/- and withdrawn Rs. 4,06,000/-, which is forgery and also a criminal offence.

17. The conclusion arrived by the District Magistrate, the Disciplinary Authority is in disagreement with the finding recorded by the Enquiry Officer as Enquiry Officer has



disbelieved of any interpolation made in the cheque and without differing with the finding of the Enquiry Officer, the District Magistrate has concluded that petitioner has committed interpolation in the cheque and forgery and cheating which was not even the charge framed against the petitioner. The District Magistrate has also relied upon the report of Block Statistical Supervisor, Deputy Development Commissioner and Mukhiya while considering the proceedings against the petitioner although those were never brought before the Enquiry Officer and as such order passed on the reports which were never placed before the Enquiry Officer or copy of said report not being supplied to the petitioner the order passed by the District Magistrate is vitiated and as such the order passed by the Commissioner in appeal is also not sustainable and liable to be set aside.

18. As a result, the order passed by the Disciplinary Authority i.e the District Magistrate, Katihar vide memo no. 53 dated 04.01.2013 as well as order passed in appeal by the Commissioner, Purnea Division, Purnea, in Service Appeal No. 15 of 2013 dated 26.06.2013, are quashed, and petitioner is directed to be reinstated in service within three months from the date of receipt/production of a copy of the order passed by this



Court.

19. However, this order will not preclude the District Magistrate, Katihar, the Disciplinary Authority, to initiate a fresh proceeding against the petitioner in accordance with law and strictly as per procedure prescribed under Bihar Government Servants (Classification, Control & Appeal) Rules-2005.

The writ petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	09.05.2018
Transmission Date	N.A.

