IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.864 of 2017

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Dileep Kumar Sinha, Son of Late Jagidsh Prasad Sinha, resident of Mohalla- Maranpur Achhywat, P.O.- Chand Chaura, P.S.- Vishnupad, District- Gaya.

... ... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Land Reforms Department, Government of Bihar, Patna.
3. The Member, Board of Revenue, Government of Bihar, Patna.
4. The Commissioner, Magadh Division, Gaya.
5. The Collector, Gaya.
6. The Sub Divisional Officer Cum Conducting Officer, Tekari, PS- Tekari, District- Gaya.
7. The Circle Officer, Bodh Gaya, P.S.- Bodh Gaya, District- Gaya.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ravindra Kr Sinha No.2, Advocate Mr. Achintya Anand, Advocate
For the Respondent/s	:	Mr. Rishi Raj Sinha- SC-19 Mr. Akhilsh Kumar Sinha, A.C. to S.C.-19

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 27-08-2018

Heard learned counsel for the petitioner and learned counsel for the State.

2. In the present case, the petitioner is challenging the order dated 18.4.2013, passed by the Member, Board of Revenue, Patna, in Service Appeal No.05 of 2013, by which he has modified the order of punishment from dismissal to compulsory retirement having held that the petitioner has greater responsibility as Karmchari and as such, he deserves this punishment. The risk of keeping him in service is substantial and may in future mean repetition of this kind of conduct, a situation, which is difficult to afford.

3. The short facts of this case are that the petitioner was working as Halka Kramchari, posted at Gaya Anchal. At the relevant time, he was posted at Bodh Gaya Halka, and he assumed the charge on 21.11.2004. One Mannu Halwai and Tarkeshwar Dusadh filed their respective applications for mutation of the land appertaining to Gram Mastipur, Thana No.360, Khata no.440 and Plot no.528, total area 6.42 decimals. The respective files of two persons were transmitted to the office of the petitioner for his report, which he has submitted to the Circle Inspector on 29.11.2004 and before that the Circle Officer has passed the order dated 22.09.2004, in which the report of the Circle Inspector dated 29.11.2004 has been discussed and quoted. It appears from the record that the present petitioner submitted the report on 29.11.2004 and on the same date the Circle Inspector submitted his report to the Circle Officer. In the report, the petitioner as well as the Circle Inspector has opined that the part of the land is outside the purview of acquisition under the Urban Ceiling Act and accordingly, the order was passed in favour of two persons.

When it came to the notice of the higher authority, a proceeding was initiated against the Circle Officer, Circle Inspector and the present petitioner. As this Court would consider the merit of the allegation with respect to the present petitioner in view of the fact that both the persons were proceeded departmentally by different Officers, charges were proved against them and different punishments have been awarded to the Circle Inspector and the Circle Officer.

4. In the chargesheet "Prapatra-K" (Annexure-5), it has been alleged that the land of the area of 1.01 acres was mutated in favour of Manu Halwai and 0.60 acre of land was mutated in the name of Tarkeshwar Dusadh in Miscellaneous Case No.27 of 2004-05 and 28 of 2004-05, this order was passed suppressing the material fact that the land which has been shown to be outside the ceiling area was factually incorrect statement, on the basis of the report of the petitioner the land was mutated in the name of the aforesaid two persons accordingly, their names were recorded in the revenue records. The District Magistrate, passed the order of dismissal against the petitioner having found that the charges alleged against the petitioner was serious in nature, which was challenged by the petitioner before the Appellate Authority, namely, Divisional

Commissioner, Gaya, in Appeal No.166 of 2008, who allowed the appeal in favour of the petitioner. The order of the Divisional Commissioner was challenged by the State before the Board of Revenue, in Service Appeal No.30 of 2009. The Board of Revenue vide his order dated 29.12.2009 set aside the order of the Divisional Commissioner and approved and affirmed the order of the Collector and thereby the order of dismissal was restored against the petitioner, which was challenged before this Court by the petitioner in C.W.J.C. No.2982 of 2010 (Dileep Kumar Sinha vs. State of Bihar and Ors), in which the Court has not considered the case on its merit but confined its consideration on the quantum of punishment and has held that when the charges levelled against all the three persons are identical, passing the order of dismissal against the petitioner violates the equality as enshrined in Article 14 of the Constitution of India and remanded back the matter to the Board of Revenue, placing reliance on the judgement rendered in the case of *Man Singh vs. State of Haryana,* reported in *(2008) 12 SCC 331*. It will be useful to quote relevant paragraph of C.W.J.C. No.2982 of 201, which is as follows:-

> *"Even in case of punishment for administrative responsibilities, there can be no arbitrariness or discrimination as*

process of Article - 14 shall normally apply in such a situation also as held in Man Singh vs. State of Haryana reported in (2008) 12 SCC 331 page 336 as follows:

> *"20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi - judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness."*

5. When the order was not implemented, the petitioner filed a Contempt petition and the Court has passed the order in favour of the petitioner, which was challenged in L.P.A. No.180 of 2014. The Division Bench has held that in a contempt proceeding the order of punishment could not have been set aside and that too on the ground of different punishments to the delinquent employees and on that ground the Division Bench has set aside the order of the Single Bench passed in M.J.C. No.1587 of 2011. In view of the order passed in L.P.A. No.180 of 2014, the Board of Revenue heard the matter and modified the order from dismissal to compulsory retirement.

6. Learned counsel for the petitioner submits that the petitioner was an employee of the lower hierarchy, he submitted the report and on that basis the Circle Inspector has verified the record and submitted his independent report on 29.11.2004, but before reaching the said report to the office of the Circle Officer, the Circle Officer has passed the order on 22.11.2004, so the Circle Officer had already framed up his mind in favour of two persons and passed the order of mutation on 22.11.2004. He further submitted that the Member, Board of Revenue, has recorded the findings that "*all these facts lead me to believe that all three officers colluded with the applicants to corner valuable pieces of land in around Bodh Gaya Temple. In view of these facts in my opinion the degree of culpability of all three officers can be said to be more or less the same*", and on such findings, the order of compulsory retirement inflicted upon the petitioner is much higher compared to two Officer as the Circle Inspector has been awarded the punishment of withholding of two annual increments with cumulative effect and a bar on promotion for two years from the date it becomes due and the Circle Officer has received the punishment of five annual increments without commutative effect and a bar on promotion for five years from the date it becomes due.

7. It has further been submitted that in the context of the punishment which has been awarded to them vis-a-vis the petitioner has been awarded the punishment of compulsory retirement, cannot be compared to be of same quantity as the effect of the compulsory retirement will be nothing but loosing of the job, but with respect to other persons, they were have deprived of annual increments and keeping in abeyance the promotion for few years and their position would be restored after cessation of its effect. At one place, the Board of Revenue has recorded the degree of culpability against all three persons are more or less same, but has wrongly recorded the fact that the petitioner has a higher responsibility, in fact the Circle Officer without waiting of the report, has passed the order of mutation and as such, the inference cannot be drawn of having any nexus with the order passed by the Circle Officer as it was completely an independent order though he has quoted the report of the Circle Inspector in his order, but it is also a matter of mystery, inasmuch as, the Officer in higher post carries more responsibility as well as committed more grievous act of misconduct having been awarded much lower degree of punishment then to the petitioner.

8. Learned counsel for the State has tried to justify the order of the Board of Revenue having stated that the Board of Revenue has considered the nature of the duties performed by all the persons and recorded a finding that the petitioner has greater responsibility as being a Kramchari, so he deserves higher degree of punishment.

9. Having considered the rival contentions of the parties, this Court is not opening the entire facts on its merit, but the question remains that the Board of Revenue has recorded a finding that all the three officers have colluded with the applicants and created the record in their favour though the land was in acquisition for the development of the Bodh Gaya Temple. It has also been recorded that the degree of culpability against all three persons by and large same. The petitioner was working as Kramchari, he has submitted a wrong report, but before reaching the report, the Circle Officer has passed the order for mutation and it is he, who will answerable how he has recorded in his order the report of the Circle Inspector. This Court is of the view that Officer has higher degree of responsibility then to a clerk as the Officer is obliged to examine the records only then he could and should have passed the order, but the Circle Officer even without waiting for the records and the report received to his office, has passed the order, which itself shows the nexus of the Circle Officer with the two persons who have filed application for mutation of the land. Equality does not apply only fairness in treatment of the proceeding, but it also applies in the matter of awarding the punishment. The higher Officer with greater responsibility has been awarded lesser punishment than the present petitioner, who is a clerk, has been awarded much higher punishment.

10. In such view of the matter, the order dated 18.04.2013, passed by the Member, Board of Revenue, Patna, is set aside. The matter is remanded back to the respondent authorities for fresh consideration taking into consideration of the fact that two Officers who were more responsible, inasmuch as, the Circle Officer without waiting for the report, has passed independent order, has been awarded lesser punishment other than the order of dismissal or compulsory retirement, whereas, the petitioner has been awarded punishment of compulsory retirement. The Board will also consider the gravity of the culpability against the petitioner and pass order keeping in mind the applicability of Article 14 of the Constitution of India. The entire exercise should be completed by the Board of Revenue within six months from the date of receipt/production of a copy of this order.

11. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	01.09.2018
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