

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1371 of 2017

In

Civil Writ Jurisdiction Case No.6 of 2016

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1. The State of Bihar, through the Principal Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
 2. Under Secretary, Food and Consumer Protection Department, Old Secretariat, Patna.
 3. O.S.D. of Principal Secretary, Special Work Officer, Food and Consumer Protection Department, Old Secretariat, Patna.

... .. Appellant/s

Versus

Yogendra Kumar Singh, Son of Late Govind Prasad Singh, resident of C/o- Nageshwar Prasad Singh, Mohalla- Dhira Chauk, Near Devi Mandir, P.O.- Anishabad, P.S.- Gardanibagh, District- Patna- 800002.

... .. Respondent/s

Appearance :

For the Appellant/s : M/s. Sunil Kr. Mandal, S.C. 3
Neelam Kumari, A.C. to S.C. 3
Bipin Kumar, A.C. to S.C. 3

For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)



Date : 14-08-2018

Heard.

The judgment dated 02.03.2017 rendered in C.W.J.C. No.06/2016 by learned Single Judge of this Court has been put to challenge in this Letters Patent Appeal.

The case emanating out of the records of this case is that the private respondent who was functioning as Block Supply Officer in the Food and Consumer Protection Department was apprehended by the Vigilance personnel raid-handed allegedly at the time of accepting bribe of Rs.2,000/-. As a result of which, Vigilance P.S. Case No.16/10 was registered under the provisions of the Prevention of Corruption Act, 1988. Since he was taken in custody, an order of suspension was also passed under Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules (hereinafter referred to as “the Rules”). The order of suspension was followed by service of memo of charges. There were two charges, first for accepting bribe of Rs.2,000/- and the second one for alleged act of misconduct as a government servant. He filed his reply to the charges and an inquiry was held. The inquiry officer submitted his report holding that the presenting officer neither led any evidence in support of the charges nor had he raised any objection to the reply given by the petitioner rather



he has accepted that there has never been any allegation against the petitioner on his integrity in his entire tenure period and he has been made a victim of conspiracy. Thus, the enquiry officer has recorded his finding that the charge no.2 regarding misconduct could not be fully established and the petitioner is required to be exonerated. So far charge no.1, i.e., acceptance of bribe is concerned, his opinion was that it should await the findings of the vigilance court in the concerned criminal trial. On the basis of the inquiry report, petitioner was served with a second show cause notice by the disciplinary authority and the petitioner gave an exhaustive reply. The learned Single Judge has noted that after lapse of almost three years, the petitioner was served with another suspension order bearing memo no.1038 dated 8.2.2014 (Annexure 16 to the writ petition) and was also served with the charge memo initiating fresh proceeding against the petitioner on the self same charges vide Annexure Annexure-18 series. Learned Single Judge has specifically noticed that the charge memo dated 28.4.2010 (Annexure-8 to the writ petition) served in the earlier round is identical to the charges contained in fresh proceeding.

In fact, the proceeding which was initiated by issuance of charge memo as contained in Annexure A could not come to its



logical conclusion and in the meantime, on the self same charges, another charge memo was served and another inquiry was held.

Questioning the aforesaid initiation of fresh proceeding, the petitioner approached this Court by filing C.W.J.C. No.7815 of 2014 but even before the matter could be heard, final order dated 6.6.2014, as contained in Annexure 1 to the writ petition, was passed in the disciplinary proceeding dismissing the petitioner.

The writ petition was dismissed granting liberty to the petitioner to assail the aforesaid order in an independent proceeding.

The question raised by the writ petitioner in the connected writ petition was that as per the provision contained in Rule 18(1) of “the Rules”, second round of initiation of the proceedings relying upon the charges in the earlier proceeding, which were still pending, would be wholly without jurisdiction being contrary to the statutory provisions.

After detailed consideration of the submission made on behalf of the parties, learned Single Judge allowed the writ petition and quashed the entire fresh proceeding including the enquiry report and the pursuant order etc. hold the same to be without jurisdiction. However, liberty was granted to the State either to conclude the earlier proceeding or to drop the same.



Hence, this appeal has been preferred by the State of Bihar.

Learned counsel appearing for the appellant, however, is unable to show any provision from the rules that even when the earlier disciplinary proceeding was still pending, the authorities could have initiated a fresh proceeding on self same charges. Mr. Mandal has made alternative submission that petitioner had already put the fresh initiation of proceeding to challenge in C.W.J.C. No.7815 of 2014 which was dismissed, therefore, he cannot be allowed to raise the issue afresh by filing a fresh writ application. Such submission made by Mr. Mandal is noted only to be rejected inasmuch as the earlier writ petition was dismissed on count that final order of dismissal was already passed during the pendency of the writ petition in the fresh proceeding and, therefore, while dismissing the writ petition, the petitioner was granted liberty to file a fresh case assailing the order of dismissal.

On perusal of Rule 18 of “the Rules”, it appears that the disciplinary authority, for the reasons to be recorded in writing, can again remit the case to the inquiring authority for further inquiry and, on which, further inquiry can be held by the inquiry officer in terms of the provisions contained in Rule 17 of sub-Rule (2). The Rule 18 further lays down that in case the disciplinary



authority disagrees with the findings of the inquiring authority on any article of charge, it can record its reasons for such disagreement and also record its own finding on such charge if the evidences on record is sufficient for the purpose. In such case, under sub-Rule (3) of Rule 18, the disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-Rule(2), to the government servant who may submit, if he so desires, his written representation or submission to the disciplinary authority which would be required to be considered by the disciplinary authority.

However, there is no such provision that even if there is no disagreement with the finding of the inquiry officer recorded in writing and even though second show cause notice was issued and the delinquent has already filed his reply to the show cause notice and final decision was still pending, a fresh/ *de novo* inquiry can be held and that too upon the self same charges.

Learned Single Judge has rightly relied upon the decision of the Apex Court rendered in **Vijay Shankar Pandey vs. Union of India [(2014) 10 SCC 589]** in this regard. Learned Single judge has also noted that the counter affidavit is absolutely silent so far as to the abandonment of the earlier exercise is



concerned and as to why the said proceeding was not taken to its logical conclusion. It also does not explain any reason or the need to initiate fresh disciplinary proceeding on the self same charge.

Having regard to the facts and circumstances of the case, we are of the opinion that the finding recorded by the learned Single Judge that initiation of second round of proceeding by the disciplinary authority on the self same charges is an arbitrary exercise of its power and wholly without jurisdiction being contrary to the provisions contained in Rule 18 of “the Rules”, does not warrant any interference and, as such, in our considered view, the concerned fresh initiation, the inquiry report, show cause notices and final order passed in second round of proceeding have rightly been quashed and set aside.

As a result, this appeal, being devoid of any merit, is dismissed. However, there would be no order as to costs.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

Sanjay/-Spd

AFR/NAFR	AFR
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