

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8609 of 2017

=====

Zahir Alam S/o Late Habibur Rahman Resident of village - Punas, P.O. - Soantha,
P.S. - Kochadhaman, District - Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Bihar, Patna.
3. The District Magistrate-cum-Collector, District - Kishanganj.
4. The Deputy Collector, Land Reforms, District - Kishanganj.
5. The Sub Divisional Officer, District - Kishanganj.
6. The Deputy Collector, Establishment, District - Kishanganj.
7. The District Supply Officer, District - Kishanganj.
8. The Circle Officer, Block and District - Kishanganj.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate

: Mr. S.K. Giri, Advocate

For the Respondent/s : Mr. Rakesh Kr. Shrivastava AC to GP15

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 17-04-2018

1. The present writ petition has been filed for quashing the order dated 29.05.2017, whereby and whereunder the petitioner has been terminated from his services by the respondent no. 3.

2. Shorn of the un-necessary details, it would be suffice to state here that while the petitioner was posted as Upper Division Clerk in the office of Circle Officer, Kishanganj, a show-cause notice dated 06.08.2016 was issued to the petitioner herein with a direction to clarify about the news dated 04.08.2016 published in the Dainik Jagaran newspaper with regard to the petitioner accepting illegal



gratification amount for the purposes of issuance of caste certificate. The petitioner had submitted his reply on 03.08.2016, however the petitioner was suspended on 06.08.2016. Thereafter, the memo of charges was served upon the petitioner herein and it was alleged that on 06.08.2016, one news item was published in the Dainik Jagaran newspaper regarding the petitioner taking monetary bribe from the persons seeking caste/ residence/ income/ creamy layer certificates. It was further alleged that the said journalist who had published the newspaper, has submitted a CD of the sting operation in which the petitioner was found accepting the bribe money. The petitioner had then filed reply to the memo of charges and the Inquiry Officer had conducted the inquiry whereafter, the inquiry officer had submitted the inquiry report dated 01.03.2017, finding the charges to have been proved. A second show-cause notice was then issued to the petitioner and by the impugned order dated 29.05.2017, the order of dismissal from service was passed as against the petitioner herein which is under challenge in the present writ proceedings.

3. The learned Senior Counsel for the petitioner has submitted that the charges are in two parts. Firstly, it has been alleged that a news item was published in the newspaper wherein, it was stated that the petitioner used to take bribe for the purposes of issuing certificates and the second part of the charge is regarding the



said reporter, who had published the news item, having submitted a CD wherein the petitioner was found taking illegal gratification. The learned Senior Counsel submits that as far as the aforesaid two charges are concerned, the Presenting Officer was required to adduce evidence to prove the said charges but admittedly, the entire inquiry report would show that not a single witness was produced by the prosecution in order to prove the charges. In sum and substance, the argument of the learned Senior Counsel is that even if the CD was produced by the prosecution, the same was required to be proved. It is also submitted that the veracity of the CD is also under a cloud since the same has not been sent to F.S.L. for examination of its genuineness and the criminal case in this regard is still pending, wherein the petitioner has already been enlarged on bail and the police till date is yet to conclude the investigation. Lastly, it is submitted that in case of no evidence, the charges could not have been found to have been proved by the enquiry officer, as such, the report of the enquiry officer as well as the order of punishment, based on the perverse inquiry report, is fit to be quashed.

4. *Per contra*, the learned counsel for the State has submitted that the petitioner himself has accepted his guilt and he has stated that after he had handed over the certificate of one Shahnawaz Hussain, the said Shahnawaz Hussain told him to keep Rs. 20/- for the purposes of drinking tea to which the petitioner was not willing to



take, hence the present case is admitted case of taking illegal gratification.

5. Having considered the rival contentions of the parties as also having gone through the materials on record, I find that the present case is a case of no evidence and the inquiry report has been submitted in a perfunctory manner without any witnesses adducing evidence much less, the said reporter having been examined by the prosecution. In such view of the matter, I find that there is no evidence at all on the record of the case so as to warrant a finding of guilt as against the petitioner herein by the Inquiry Officer. Since the inquiry report, in my opinion fails, the order of punishment dated 29.05.2017 is bound to go inasmuch as, the same is solely based on the report of the Inquiry Officer. In this regard, it would be useful to note the judgments cited by the learned Senior Counsel for the petitioner which are as follows :-

1. ***AIR 1964 SC 364 pg 23 (Union of India vs. H.C. Goel)***
2. ***(2009) 2 SCC pg 570 (Roop Singh Negi vs. Punjab National Bank and others)***
3. ***2018(1) PLJR pg 91 (Rama Shankar Chaudhary vs. State of Bihar)***
4. ***2018 (1) PLJR pg 784 (Shweta Mishra vs. State***



of Bihar).

6. For the reasons mentioned hereinabove and in view of the admitted position in law as well as on facts that the findings of the inquiry officer is based on no evidence, I deem it fit and appropriate to quash the inquiry report dated 01.03.2017 as well as set aside the order of dismissal dated 29.05.2017.
7. The writ petition is allowed.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	NAFR
CAV DATE	-
Uploading Date	07.06.2018
Transmission Date	-

