

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11676 of 2013

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NAGENDRA PRASAD SON OF LATE ETBARI PRASAD, A RESIDENT
OF MOHALLA - JHINJHARI BAGH, PO PATNA CITY PS MALSALAMI
DISTT. PATNA

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Labour Resources Department, Vikash Bhawan, Patna.
3. Labour Commissioner, Labour Resources Department, Govt. Of Bihar, Patna
4. Accountant General, Bihar Birchand Patel Marg, Patna.
5. Deputy Secretary, Finance (Personal Grievances Determination Cell) Department, Patna.
6. Bihar Public Service Commission, Through Secretary, Bailey Road, Patna
7. Assistant Labour Commissioner, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Anil Kumar Mukund, Advocate
For the Respondent/s	: Mrs. Shame Sinha, AC. To AAG IX
For the Accountant General:	: Mr. Uday Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 16-05-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing order dated 04.05.2012/30.05.2012 by which petitioner has been awarded punishment of deduction of 10% pension by the Disciplinary Authority as well as order dated 07.01.2013 by which review petition was rejected.

3. Briefly stated, the case of the petitioner is that a departmental proceeding was initiated against him on 13.04.2006 by serving memo of charge in which 10 charges



were framed against him but departmental proceeding could not be completed till the time of his retirement on 31.01.2009 and proceedings were converted under Section 43B of Bihar Pension Rules.

4. All the charges related to petitioner's tenure at Gaya and he was transferred to Katihar and Headquarter for departmental proceeding was made Patna. By departmental resolution dated 04.02.2006 decision was taken to initiate departmental proceeding against petitioner and K.K. Mahto was appointed as Inquiry Officer. However, subsequently by resolution dated 13.04.2006 Chandranath Jha, Deputy Secretary was appointed Inquiry Officer and finally by resolution dated 03.11.2008 Garib Sahu, Additional Secretary was appointed as Inquiry Officer.

5. A counter affidavit has been filed on behalf of respondents in which it has been stated that memo of charge in form 'Ka' dated 11.02.2006 was framed and served upon petitioner and K.K. Mahto was appointed as Inquiry Officer and Ramdeo Rajak, Joint Labour Commissioner was appointed as Presenting Officer.

6. Petitioner was given 15 days time to submit his reply against the memo of charge, meanwhile Chandranath Jha,



Deputy Secretary was appointed as Inquiry Officer in place of K.K. Mahto vide memo dated 31.3.2006. However, thereafter Garib Sahu was appointed as Inquiry Officer and Ramchandra Chaudhary was appointed as Presenting Officer. Petitioner retired during the departmental proceeding on 31.01.2009 and he was allowed 90% provisional pension after his retirement.

7. The inquiry Officer concluded departmental proceeding and submitted his report on 30.03.2010 in which out of 10 charges, charges No. 1, 2, 5 and 7 were proved and 2nd show cause notice was issued vide letter dated 29.06.2010 and petitioner submitted his reply on 19.12.2010.

8. After considering reply of petitioner, a punishment of reduction of 10% pension was passed by the disciplinary authority by his order dated 04.05.2012 after seeking advice from the B.P.S.C. who also concurred with the proposed punishment. Petitioner filed a review petition which was rejected by order dated 07.01.2013.

9. The Inquiry Officer has found four charges i.e. charge No. 1, 2 5 and 7 as proved. Allegation in charge No. 1 is that petitioner harassed a peon namely Lalan Prasad and also used unparliamentary language against Deputy Labour Commissioner at Gaya and in support of said charge two letters



of said Deputy Labour Commissioner at Gaya dated 26.03.2004 and 24.11.2004 has been produced by Presenting Officer as Exhibits 1 and 2 by which petitioner was asked to submit his explanation but he never submitted any explanation. However, petitioner submitted before the Inquiry Officer that he had submitted his explanation to the concerned authority and same was accepted and proceedings were dropped but due to malafide reasons it has been revived by his successor. Against charge No. 1 conclusion drawn by the Inquiry Officer is that petitioner did not submit any defence with respect to charge No. 1, as such same is established.

10. Allegation in charge No. 2 against petitioner is with respect to not submitting any explanation to the show cause dated 15.12.2003 and 24.11.2004 issued by Labour Superintendent, Gaya which has been produced by Presenting Officer as exhibits 5 and 4, upon which petitioner submitted that he had already submitted his explanation to the concerned authority and same was accepted by him. However, same is being revived for malafide reason. The Inquiry Officer has concluded that petitioner has not submitted any defence in his favour to prove his innocence rather has levelled unscrupulous allegation against Superior Officers, as such charges are proved.



11. Allegation in charge No. 5 is with respect to disobeying the order of District Magistrate, Gaya. The District Magistrate, Gaya wrote to Labour Commissioner by his letter dated 13.05.2005 which has been produced as exhibit-7 and Divisional Commissioner, Gaya by his letter dated 05.06.2005 had requested Secretary, Labour Department which has been produced as exhibit-8. The petitioner has denied that any such letter was issued by the District Magistrate or Divisional Commissioner, Gaya against petitioner. The Inquiry Officer has concluded that charges are proved as petitioner has levelled unfounded allegation against the District Magistrate, Gaya as well as Divisional Commissioner, Gaya.

12. As far as charge No. 7 is concerned. Allegation against the petitioner is submitting false report to the Superiors as contained in letter dated 06.07.2005 issued by Deputy Labour Commissioner which has been marked as exhibit-11 which has been denied by the petitioner. However, the Inquiry Officer has concluded that petitioner has only orally contradicted but has not produced any evidence, as such charge is proved.

13. In the departmental proceeding it is for the department to establish the charges and onus lies upon the Presenting Officer to establish the charges as framed in memo of charge on



the basis of documentary as well as oral evidences which were required to be adduced by the Presenting Officer before the Inquiry Officer. The Inquiry Officer has shifted burden of proof upon petitioner to establish his innocence which is not permissible. It is for the department to prove the charges and not for the charge-sheeted employees to establish his innocence.

14. The scope of writ court for judicial review of orders passed by departmental authorities in Disciplinary Proceedings is very limited. The writ court cannot appreciate the evidence or its relevancy or adequacy as the same is function of departmental authorities, however, there should be some legal evidence brought on record by the Presenting Officer in order to establish the charges against the delinquent. The documentary evidence requires to be proved before the Inquiry Officer and while leading oral evidence opportunity has to be granted to the delinquent to cross-examine the witnesses produced on behalf of department. In present case none of the documentary evidences has been proved by the witnesses and same has been marked as exhibit which were documents on basis of which charges were required to be established.

15. The Disciplinary authority while considering the enquiry report has not considered the reply of the petitioner



against the findings of Inquiry Officer and none of the grounds submitted by petitioner against the findings of Inquiry Officer has been considered by the Disciplinary authority while passing the order of punishment and on this ground alone the order passed by the Disciplinary authority is liable to be set aside. The order passed by the Reviewing Authority also suffers from same vice and as such is not sustainable.

16. For the reasons as stated above, the order passed by disciplinary authority as contained in Annexure-1 of the petition as well as order passed by the Reviewing Authority is not sustainable and accordingly quashed. However, this order will not preclude the disciplinary authority to initiate fresh proceeding in accordance with law against petitioner if he thinks it expedient.

17. The writ petition stands allowed.

(S. Kumar, J)

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

