IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15611 of 2016

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Sanjay Kumar Singh son of Ambika Prasad Singh Permanent resident of Village - Nadiyain, P.S. - Barun, District - Aurangabad at present residing at Ambika Aangan, Road No. 3, Sheopuram, P.S. Rupaspur, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Additional Secretary, Public Health Engineering Department, Government of Bihar, Patna.
4. The Joint Secretary, Public Health Engineering Department, Government of Bihar, Patna.
5. The Economic Offences Unit through its Superintendent of Police, Rajvanshi Nagar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Adv.
		Mr. Sanjay Kumar, Adv.
For the State	:	Mr. Maruth Nath Roy, Adv.
For the EOU	:	Mr. V.N.P. Sinha, Sr. Adv.
		Ms. Soni Shrivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 03-12-2018

Heard learned counsel for the petitioner and counsel for the State as also counsel for the Economic Offence Unit.

In the present case, the petitioner is challenging the Memo No. 441 dated 6.6.2016, whereby and whereunder, the petitioner has been served the punishment of major penalty of dismissal from service under Rule 14 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005 (hereinafter to be referred to as ‘CCA Rules).

The petitioner entered into the service of Public Health Engineering Department (P.H.E.D.) as Assistant Engineer on 15.8.1987 and was later on promoted as Executive Engineer. While posting at Samastipur, the Economic Offence Unit received a substantive information of illegal acquisition of property by the petitioner which is disproportionate to the known source of income , led to institution of First Information Report registered as Economic Offence Case No. 38 of 2013 against the petitioner and a raid was conducted at several places, the Economic Offence Unit, procured the documents with regard to acquisition of property by the petitioner and it was found that he has purchased the property in the name of his father, his brother, his wife and one Pushpa Singh and all the documents were seized by the Economic Offence Unit. In the background of lodging of the First Information Report, the petitioner was put under suspension and later on a departmental proceeding was initiated against him in which the show-cause was filed taking a stand that the charges, which have been alleged against him with regard to disproportionate asset, are quite incorrect as some of the properties which were purchased by his father and his family members having been wrongly tagged and has been shown as his property, he has furnished explanation with respect to each item of the property and has submitted that Smt. Puspa Singh is the wife of Dr. Sanjay Kumar Singh and resident of G.T. Road, Dihri, P.S. Dihri, Rohtas. which is clear from the registered sale deed wherein the photograph which has been pasted in the registered document is not of his wife. He has also stated that his brother's property, who is serving the Indian Army as a Lieutenant Colonel, having been also tagged with the property of the petitioner whereas he has sufficient means to purchase the same. He has taken a stand that the property of the second brother who is also working in a private company and getting a substantial amount of salary and his property has also been tagged with the property of the petitioner. Further submitted that certain property, which has been purchased by his father before he joined the services, having been tagged with the property of the petitioner and wife is also doing her business and thereby earning the amount and, out of that, the property has been acquired.

The explanation submitted by the petitioner did not satisfy the Disciplinary Authority and Disciplinary Authority ultimately decided to proceed in a departmental proceeding. It also appears that certain properties, which were/are standing in the name of his brother, who is serving the Indian Army, as well as property of his father and mother, on an application filed by the petitioner, having been released by the order of the Criminal Court and it is not in dispute and also a fact that the investigating agency, which has not completed the investigation and filed a concrete charge-sheet against the petitioner rather the same is still under investigation. The Enquiry Officer proceeded with the enquiry and passed the order on the basis of First Information Report and the enquiry report but, allegations mentioned in the First Information Report is still under investigation. The Investigating Officer itself has not arrived to a final conclusion about the acquisition of property by the petitioner. It is still beyond the horizon as to whether it is his property or the property is of his family members.

A plea has been taken by the State that such type of properties are purchased in benami and have been purchased by the petitioner whereupon learned counsel for the petitioner submits that every information was given from time to time to the authority and all the family members, in whose name the properties are standing, they have filed their respective return under the Income Tax giving details of the property acquired by the petitioner. So, he has wrongly been dismissed from service.

It appears from the enquiry report that the findings rests upon the contents of the First Information Report, have been not proved by any witness about the acquisition of properties by the petitioner which is still under investigation and also the report has not been proved by any such witness. The First Information Report without proof of its contents is not legal piece of evidence, is not a sufficient material, inasmuch as, no material in the eye of law to record a finding against the petitioner unless those contents of the First Information Report is proved by the witness in the Department and is put to cross-examination by the other sides. The lodging First Information Report cannot be a basis for conviction either in a criminal case or a departmental proceeding. Only the person can be convicted or dismissed from service subject to a condition that the contents mentioned thereon is proved by a person involved in procuring the information with regard to acquisition of property. In support of his submission, the petitioner has placed reliance on the judgment in the case of Roop Singh Negi Vs. Punjab National Bank & Ors. reported in (2009) 2 SCC 570 and in the case of State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha reported in 2010 (2) SCC 772 wherein in both the cases, the Court has said that the Enquiry Officer will not act as prosecutor or side with any of the party but, he should be impartial person adjudicating the lis between the parties. In Roop Singh Negi case (supra), it has been held mere filing of document without being proved by any witness has no legal value unless it is proved by any witness. Here in the present case, the Investigating Officer has not completed the investigation even after lapse of more that five years, the Investigating Agency is not sure about the property which has been acquired by the petitioner and that is the basis for starting enquiry proceeding against the petitioner. When primary body, which has investigated, is not sure about the property belonging to the petitioner then merely lodging a criminal case without any concrete information cannot be a basis for recording a finding against the petitioner. It appears that the Enquiry Officer submitted the enquiry report against the petitioner and, thereafter, the petitioner was served with second show-cause which he has filed his explanation, ultimately he has been visited with the order of dismissal impugned in the present case. Merely lodging a First Information Report cannot be a basis for arriving to a finding of misconduct rather the contents with regard to those material has to be proved when the other side is disputing that it is not the property belonging to him, inasmuch as, the Investigating Agency has not filed the charge-sheet to show that prima facie the property belongs to him.

In that view of the matter, the order of dismissal contained in Memo No. 441 dated 6.6.2016 is set aside, the enquiry report of the Enquiry Officer is quashed and the matter is again remanded back to the Enquiry Officer who will conduct the enquiry in accordance with law.

Learned counsel for the Economic Offence Unit has submitted that they are likely to complete the investigation and file a charge-sheet preferably within a period of six months, will be applicable subject to condition of any stay order by any court of law. The Enquiry Officer will proceed with the enquiry after submission of the charge-sheet as per law settled by the Hon’ble Apex Court in the judgments aforesaid.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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