

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1496 of 2015**

**In**  
**Civil Writ Jurisdiction Case No.16074 of 2007**

=====

Niranjan Kumar Ghosh Son of Late Kamini Mohan Ghosh, presently residing at Maya Sadan, Adarash Colony, West Patel Nagar, P.S. - Shastri Nagar, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar
2. Member, Board of Revenue, State of Bihar Patna.
3. Secretary - cum - Commissioner, Department of personnel and Administrative Reforms, Govt. of Bihar, Patna.
4. Deputy Secretary, Department of personnel and Administrative Reforms, Govt. of Bihar, Patna.

... .. Respondent/s

=====

**Appearance :**

|                      |   |                                     |
|----------------------|---|-------------------------------------|
| For the Appellant/s  | : | Ms. M. Chatterjee, Advocate         |
|                      |   | Mr. Samir Kumar Sinha, Advocate     |
| For the Respondent/s | : | Mr. Saroj Kumar Sharma, AC to AAG-3 |

=====

**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**  
**and**  
**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)**

**Date : 27-02-2018**

This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna has been filed by the appellant- writ petitioner feeling aggrieved by the judgment and order of a learned single Judge of this Court dated 23.06.2015 passed in CWJC No. 16074 of 2007 dismissing the writ petition.



The facts leading to the appeal in question is that the petitioner, an Assistant in the Department of Human Resources, was proceeded against for alleged act of misconduct of conspiring in recommending for grant of permanent affiliation to the Muslim Minority Ahmadia B.Ed. College, Rampara, Katihar and which was held to be a misconduct for imposition of penalty of stoppage of one increment with non-cumulative effect. The punishment order bearing Memo No. 2868 dated 09.10.2006 was questioned by the petitioner through the writ petition in question and which has been dismissed by the judgment and order impugned. Hence the present appeal.

Ms. M. Chatterjee, learned counsel has appeared on behalf of the appellant/petitioner while the State is represented by Mr. Saroj Kumar Sharma, learned Assisting Counsel to Additional Advocate General No.3.

4. Ms. Chatterjee, while inviting the attention of this Court to the charge, a copy of which was enclosed as Annexure-3 to the writ application, has submitted that even though a charge of conspiracy has been foisted on the petitioner for making recommendation for grant of affiliation in question but the fact is that the petitioner holding the post of Assistant in the Human Resources Department, had simply forwarded the



Inspection report submitted by the District Magistrate, Katihar before the superior authorities for necessary orders and it is based on such inspection report of the District Magistrate, Katihar that the College in question was granted permanent affiliation. According to Ms. Chatterjee, a simple forwarding by the petitioner in capacity of an Assistant cannot be termed a misconduct for inviting disciplinary proceeding because a routine discharge of duty can not fall within the realm of the term 'misconduct'. She submits that it is for this reason, that the Inquiry Officer vide his report enclosed at Annexure-5 to the writ petition exonerated the petitioner of the charge which did not satisfy the disciplinary authority who vide his disagreement note dated 19.07.2006, a copy of which is placed at Annexure-6 put the petitioner on second show cause notice. She submits that it is based on an opinion formed in the disagreement note, which has resulted in the punishment order dated 09.10.2006 which is impugned at Annexure-8 and which has been affirmed by the appellate authority while dismissing the appeal on 30.05.2007 vide Annexure-13.

According to learned counsel, the petitioner has been punished for a charge which is vague and is based on no evidence. She submits that the learned Single Judge simply



recording satisfaction on the procedure followed has not chosen to test the grievance raised on the issue of perversity, which is written all over.

Mr. Saroj Kumar Sharma, learned Assistant counsel to learned Advocate General No.3 has addressed the Court and when asked to satisfy the Court on the evidence supporting alleged charge of conspiracy, nothing could be demonstrated from the records of the proceeding which could satisfy this Court that there was material present with the respondent to uphold the charge of conspiracy against the petitioner.

We have heard learned counsel for the parties and we have perused the records.

The memo of charge is at Annexure-3 and alleges the petitioner of entering into a conspiracy in recommending grant of permanent affiliation to the college in question in the light of the inspection report submitted by the District Magistrate, Katihar. While it is the specific plea of Ms. Chatterjee that the petitioner holding the post of Assistant had no choice but to simply forward the report submitted by the District Magistrate, Katihar to the superior authorities for taking appropriate decision on grant of permanent affiliation to the



College, there is nothing present either in the disagreement note or in the order(s) impugned, which would satisfy this Court that there was any form of recommendation accompanying the forwarding to constitute a charge of conspiracy. In fact the charge memo is per se vague and does not discuss a single piece of evidence either oral or documentary to support the charge framed against the petitioner. Even otherwise, it is an absurdity to accept that the petitioner as an Assistant in the office of the Human Resources Development Department had any jurisdiction vested to make any kind of recommendation on the report of the District Magistrate, Katihar and even assumingly so, such act did have a binding effect on the higher authorities.

As we have observed, the charge memo does not refer to a single evidence to support the charge of conspiracy and is too vague to invite any proceeding. The disagreement note at Annexure-6 is even pathetic where the disciplinary authority has charged the petitioner for not recording any opinion on the inspection report of the District Magistrate, Katihar as to whether or not it should be accepted. While paragraphs 1 and 2 of the disagreement note deals with some other employee, in so far as the petitioner is concerned, the issue



is discussed at paragraph 3 and such is the observation made.

In our opinion, the petitioner as an Assistant in the Human Resources Department did not enjoy the status of commenting, either in favour or in opposition, of the District Magistrate's report and thus he had no option but to forward the same to the superior authorities for their decision. In fact after the Inquiry Officer had exonerated the petitioner of the charge on examination of the material available, there was nothing further to be done in the proceeding which ought to have been dropped. The disagreement note lends support to our view for it expresses a disagreement on a non-existent issue to uphold the charge. Obviously, proceeding on such vague charge and even more vague disagreement note, the order of penalty is a perversity because it discusses no material to uphold the charge of conspiracy against the appellant.

The appeal is allowed and consequently the writ petition is allowed.

For the reasons discussed, the order of penalty passed by the disciplinary authority at Annexure-8 dated 15.10.2006 together with the appellate order at Annexure-13 dated 30.05.2007 are quashed and set aside.



Let the increment of the petitioner so withheld together with arrears admissible, be released within a period of three months from the date of receipt/production of a copy of this order.

There shall be no order as to costs.

**(Jyoti Saran, J)**

**( Chakradhari Sharan Singh, J)**

arun/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | N/A        |
| Uploading Date    | 12.03.2018 |
| Transmission Date | 12.03.2018 |

