

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 30 of 2014

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Anandi Prasad Singh Son Of Kashi Singh Resident Of Village - Tetarpur, P.S. Barbigaha (Jairampur More), District - Sheikhpura, Presently Posted As Panchayat Secretary Under Sangrampur Block, District - Munger

.... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna
3. The Director, Panchayati Raj Department, Government of Bihar, Patna
4. The Divisional Commissioner, Munger Division, Munger
5. The District Magistrate, Munger
6. The District Panchayat Raj Officer, Munger
7. The Director, N.R.E.P., Munger
8. The Program Officer, Jamalpur, District - Munger

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Ajit Kumar Singh, Advocate
For the Respondent/s : Mr Manoj Kumar, AC to GP IV

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 29-06-2018

Heard learned counsel for the petitioner as well as learned counsel for the respondent-State.

2 The writ petition has been filed for quashing the order dated 24.09.2012 of the District Magistrate, Munger whereby the petitioner has been awarded the punishment of reducing his pay to the initial scale of Panchayat Secretary. The petitioner has gone in appeal by filing Service Appeal No 60 of 2012 before the Divisional Commissioner, Munger against the said order which also has been rejected under order dated 25.05.2013. The petitioner has also prayed



for quashing the order passed in Service Appeal.

3 The charge memo, which has been issued by the Deputy Development Commissioner on *Prapatra Ka*, is dated 15.09.2011. The charges are to the extent that for the purpose of constructing a drainage under the MANREGA Scheme, the petitioner, being the Executing Agent, has withdrawn an amount of Rs 1,72,500/- out of the total estimated cost of Rs 1,88,700/- for the work which was to be executed in the year, 2006-2007. It is alleged that in spite of the withdrawal, the works have not been completed up till 2010-2011. In view of the aforesaid allegations, the petitioner has been charged with temporary embezzlement of the amount which is said to be held on by petitioner for four years. The withdrawals of the amounts were on four dates which are as follows:

Rs 7,500/- on 30.03.2007
Rs 60,000/- on 15.06.2007
Rs 80,000/- on 05.07.2007
Rs 25,000/- on 15.11.2007

4 The petitioner's response to the charge memo is Annexure 3 to the writ petition and the same is dated 14.02.2011. The petitioner has challenged the order of punishment by submitting that the entire issue has arisen on the basis of complaint made by Vikas Kumar Singh. However, the said Vikas Kumar Singh has never been examined. He submitted that the evidence, he produced along with



the show cause, has not been considered. No complaint was made by any villager and he has also submitted that the report of the Programme Officer dated 14.02.2011 would clearly establish that the petitioner has not committed any misconduct and the fact that he has completed most of the work and deposited the balance amount of Rs 28,414 has not been considered in the proceedings conducted against him.

5 As regards the petitioner's submissions that complainant Vikas Kumar Singh has not been examined, this Court would observe that no such person has been named in the charge memo. On bare perusal of *Prapatra Ka*, it does not appear that proceedings have been initiated on the basis of any complaint made by Vikas Kumar Singh. The allegations are not said to have been made by him. In view of the said position, this Court does not consider it necessary that Vikas Kumar Singh should have been examined in the proceedings.

6 Second submission made on behalf of the petitioner is that the evidence produced along with the show cause as also the letter dated 14.02.2011 of the Programme Officer has not been considered. This Court would observe that the enquiry report which is Annexure H to the counter affidavit shows consideration of the documents produced by the petitioner. The petitioner is deriving



sustenance from the report of the Programme Officer, Jamalpur dated 14.02.2011 (Annexure 2) which records that the petitioner could not complete the work on time because some obstructions were raised in the discharge of work by the local anti social elements. It records that work equivalent to an amount of Rs 1,44,086/- has been completed and the balance amount of Rs 28.414/- has been deposited. The said report is a sketchy report without reference to any detail as to what is the basis in support of the report and whether petitioner had given any complaint regarding obstruction in the discharge of work. The report also does not take into consideration that any complaint has been made either by the petitioner or the local officials since 2006-2007 to the authorities to the extent that obstruction is being caused to the work. All these facts are missing. Even the date on which the balance amount of Rs 28.414/- is said to have been deposited by the petitioner is not to be found in the report dated 14.02.2011.

7 The report of the Enquiry Officer reveals the reason for such omission in the report dated 14.02.2011 inasmuch as all the documents in support of the conclusions arrived at in the report of the Programme Officer dated 14.02.2011 have again been submitted by the petitioner in the proceedings. The Enquiry Officer has found, with reference to the documents, that the measurement book in support of work was opened on 05.02.2011, and the work was certified just two



days later on 07.02.2011 by the Junior Engineer, and by the Assistant Engineer on 10.02.2011. The last withdrawal, which has been made by the petitioner, is of 15.11.2007. As such, between the last withdrawal and opening of the measurement book, more than three years have elapsed.

8 Another important date in the sequence of events is the date on which the petitioner has been asked to show cause why the works have not been completed. The said dates are to be found in the petitioner's own letter dated 14.02.2011 which is in response to the earlier three letters issued to the petitioner on 22.09.2009 and 30.11.2009 asking him to show the progress and utilization certificate in respect of the works for which advance was taken by he petitioner. The response is dated 14.02.2011. The report of the Programme Officer favourable to the petitioner is also of the same date (14.02.2011). It is admitted case of the petitioner that deposit of the balance amount was also made in the MANREGA Account No 68300 on the same date that is 14.02.2011.

9 All the steps have been taken by the petitioner on 14.02.2011 to show that the works of the year, 2006-2007 have been executed and balance amounts deposited after having the measurement book opened on 05.02.2011. Certification of the Engineers was obtained on 07.02.2011 and 10.02.2011. Thus, in



between 05.02.2011 to 14.02.2011, all the documents have come into existence on which the petitioner places his reliance to refute the allegations that having withdrawn the amount of Rs 1,72,500/- in 2007, he has not utilized the same and not completed the works up till 2011. As per the records relied upon by the petitioner and his response to the charge memo as also his response to the communication dated 14.02.2011 (Annexure 3), the admitted position emerges that all the documents go to show that the works are said to have been executed between 05.02.2011 to 14.02.2011 though the amounts have been withdrawn in 2007 itself as per the documents relied on by the petitioner.

10 On consideration of the aforesaid stand of petitioner, this Court would conclude that the fact of temporary embezzlement stands admitted. This Court does not find any reason to exercise its writ jurisdiction in favour of the petitioner. The writ petition is devoid of merit and the same is dismissed.

11 Learned counsel for the petitioner submits that the quantum of punishment is grossly disproportionate to the allegations since he has bona fide returned the unutilized amounts. He prays that this Court may issue directions to the respondent-authorities with respect to the quantum of punishment.

12 This Court is conscious of its limitation to interfere



with the decision of the authorities on quantum of punishment. If the petitioner can make out a case that the punishment is grossly disproportionate to the allegations or otherwise shocking to the conscience then he may persuade the authorities by making a representation with respect to the limited issue of quantum of punishment. Needless to say if the same is filed, the same shall be considered by the authorities in accordance with law.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.07.2018
Transmission Date	NA

