

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17106 of 2018

Uma Shankar Singh Son of Late Sarwajeet Singh Resident of Village -
Chhabilapur, P.O. Srikhinda, P.S. - Nokha, District - Rohtas, Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education Directorate of Primary Education,
Government of Bihar, Patna.
3. The Regional Deputy Director of Education, Magadh Division, Gaya.
4. The Regional Deputy Director of Education, Patna Division, Patna.
5. The District Education Officer, Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar

For the Respondent/s : Mr.Subash Chandra Mishra,SC-16

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 16.05.2019

The present writ petition has been filed for setting aside the enquiry report dated 19.06.2017, so far as it relates to charge nos. 2 and 3, for setting aside the order of dismissal dated 08.12.2017 issued by the Director, Primary Education, Education Department, Government of Bihar, Patna and the appellate order dated 12.07.1980.

The brief facts of the case are that while the petitioner was posted as Block Education Officer, Obra, District- Aurangabad, a trap was laid by the Vigilance Investigation Bureau on 24.11.2016 and the petitioner is alleged to have been caught while receiving a bribe of Rs. 10,000/-, whereafter a



Vigilance P.S. Case No. 125 of 2016 dated 24.11.2016 was registered against the petitioner for the offences under Sections 7/13 (ii) read with Section 13(2)a of the Prevention of Corruption Act. The petitioner is stated to have been remanded to judicial custody whereupon he was suspended vide order dated 08.12.2016. Subsequently, the petitioner was granted bail by an order dated 06.02.2017 passed by the learned Special Judge, Vigilance Trap, Patna in Special Case No. 67 of 2017 and after release from custody, he submitted his joining on 09.02.2017 before the Director, Primary Education, Bihar, Patna. The further fact of the case is that a departmental proceeding was directed to be initiated against the petitioner by an order contained in Memo No. 345 dated 23.03.2017 and the Regional Deputy Director of Education, Patna Division, Patna was appointed as the Enquiry Officer whereas the District Programme Officer, Establishment, Aurangabad was appointed as a Presenting Officer. A memo of charge dated 18.03.2017 was issued to the petitioner herein wherein the charges levelled against the petitioner was regarding demanding a sum of Rs. 10,000/- as bribe from one Rajiv Kumar, Teacher, Middle School, Madhpur, Obra, District-Aurangabad for preparing his salary in the trained category, for releasing arrears of salary and



for endorsement of his service book. The other charges levelled against the petitioner were regarding demanding bribe and being negligent in discharging duties as also engaging in undignified activities by being caught red handed taking a bribe of Rs. 10,000/-. The petitioner had then submitted his reply to the aforesaid charge sheet issued to him stating therein that all the charges levelled against him were incorrect and no money was ever recovered from the possession of the petitioner or from his house nor from any place at his residence and his hands had never been dipped in any solution by the Trap Team as also the actual fact was that the complainant was working as In-Charge Headmaster of Middle School, Medhpur, superseding the other senior teacher, namely, Anju Kumari and when the matter came to the knowledge of the petitioner he had passed an order dated 19.02.2016 stating therein that Anju Kumari who is a senior teacher will be In-Charge of the said school but the complainant did not comply with his order, hence his salary was stopped. Thereafter, the Enquiry Officer had held an enquiry and submitted his enquiry report dated 19.06.2017, wherein it has been stated that neither the complainant turned up for adducing his evidence nor any other witnesses had turned up. It has been further stated in the enquiry report, with regard to charge no. 1,



that the said charge appears to be doubtful and suspicious. As regards the charge nos. 2 and 3, it has been stated that though the defence of the Charged Officer i.e. the petitioner herein is noteworthy but then it is also a fact that the Trap Team of the Investigation Bureau had caught the petitioner taking bribe of Rs. 10,000/- which is against the duties of the petitioner. The disciplinary authority had issued a second show cause notice dated 10.08.2017 stating therein that since the Enquiry Officer has found the charges to have been proved, hence, it has been found that the act of taking bribe smacks of unfaithfulness towards duties and proves conduct, unbecoming that of the behaviour expected from a government servant, as such, the petitioner was granted time till 17.08.2017 to submit his written representation against the enquiry report/the second show cause notice. The petitioner had then submitted his reply to the second show cause notice on 28.08.2017, whereafter the impugned order of punishment dated 08.12.2017 has been passed by the Director, Primary Education, Government of Bihar, Patna, whereby and whereunder the punishment of dismissal from service has been inflicted upon the petitioner herein. The petitioner had preferred an appeal against the impugned order of punishment dated 08.12.2017 but the same has also been



dismissed by an order dated 12.07.2018.

The learned counsel for the petitioner has raised a short point for consideration to the effect that no evidence has been led by the Department to prove the charge. With reference to the enquiry report, the learned counsel for the petitioner has referred to the report of the Enquiry Officer to submit that except for the documents referred to in the charge memo, no other evidence was led by the Presenting Officer nor the complainant turned up to adduce evidence nor any other witnesses had been examined on behalf of the prosecution. The learned counsel for the petitioner further submits that the position in nutshell is that neither the complainant nor the members of the Trap Team nor the Pre Trap/ Post Trap witnesses nor the investigating officer of the Vigilance Case lodged against the petitioner herein have been examined in order to prove the charges levelled against the petitioner. Though the Vigilance Case, lodged against the petitioner herein, is pending for adjudication before the Vigilance Court but still the Enquiry Officer has held the charges nos. 2 and 3 to have been proved simply because the Vigilance Trap Team had caught him red handed accepting bribe, thus in effect accepting the allegations levelled against the petitioner in the FIR as true without there



being any evidence. The learned counsel for the petitioner has referred to a judgment of the Hon'ble Apex Court reported in **(1999) 2 SCC 10 (Kuldeep Singh vs. Commissioner of Police & Ors.)** and with reference to the conclusion recorded at paragraph nos. 4 to 10, 25 to 32 and 39, the learned counsel for the petitioner submits that in absence of evidence led by the Department, the Enquiry Officer could not have upheld the charges.

Per contra, the learned counsel for the respondent-State has submitted that there is no procedural infirmity in the conduct of the departmental proceeding, hence this Court is not required to sit in appeal over the findings of the Enquiry Officer, thus the order of punishment of dismissal inflicted upon the petitioner is fit to be upheld by this Hon'ble Court.

I have heard the learned counsel for the parties and gone through the materials on record. The undisputed fact is that neither any oral evidence has been led by the prosecution nor any documentary evidence has been produced by the prosecution to prove the charges no. 2 & 3, (charge no. 1 having not been found to be true by the Enquiry Officer), and the only basis for holding the charge nos. 2 and 3 to have been proved i.e. regarding the petitioner having accepted a bribe of



Rs. 10,000/- which was an undignified act and a conduct not becoming that of a government servant, was that the petitioner had been caught by the Vigilance Trap Team taking a bribe of Rs. 10,000/-. Thus, this Court is of the view that there was no evidence to prove the charge nos. 2 and 3 levelled against the petitioner. In this regard, it would be useful to refer to a judgment rendered by the Hon'ble Apex Court, reported in **2009(2) SCC 570 (Roop Singh Negi vs. Punjab National Bank & ors.)**, paragraph nos. 14, 15 and 23 whereof would squarely apply to the case in hand and is therefore being reproduced herein below:-

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to



prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. *We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a matter that no evidence was left.*

23. *Furthermore, the order of the disciplinary authority as also the appellate authority*



are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable to a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

In the aforesaid case of Roop Singh Negi (supra), the only evidence available with the disciplinary authority was the



confession of the delinquent and the FIR. No witness was examined in the said case to prove the documents, rather the management witnesses merely tendered the documents. This exercise was held to be insufficient by the Hon'ble Apex Court to uphold the charge and it was also held that the allegations made in the FIR simplicitor, not proved by leading evidence, by itself cannot be treated as evidence. The aforesaid judgment rendered by the Hon'ble Apex Court in the case of Rup Singh Negi (supra) squarely covers the present case. In this connection, it would also be relevant to refer to the judgments rendered by the Hon'ble Apex Court in the case of ***State of U.P. vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772.***

Apparently, the impugned order of punishment dated 08.12.2017 rests on no evidence since the same is based on a perfunctory enquiry report which is also based on no evidence, hence the impugned order of punishment dated 08.12.2017 passed by Director, Primary Education, Education Department, Government of Bihar, Patna is fit to be set aside and, is accordingly quashed. Since the view expressed by the disciplinary authority, in its order of punishment dated 08.12.2017 has been mechanically endorsed by the appellate authority and the order of punishment dated 08.12.2017 has



already been quashed herein above, the order of the appellate authority dated 12.07.2018 is equally unsustainable, hence is also quashed.

The writ petition is allowed.

The petitioner stands reinstated and would be entitled for consequential benefit since the action of the State authorities has been found to be illegal. Reference in this connection be had to a judgment rendered by the Hon’ble Apex Court in the case of *Deepali Gundu Surwase vs. Kranti Junior Adhyapak & ors.* reported in *(2013) 10 SCC 324*.

(Mohit Kumar Shah, J)

S.Sb/-

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CAV DATE	
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