

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7075 of 2016

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Suresh Prasad, Son of Sri Balgovind Prasad, resident of Village- P.O. and P.S
Silao, District Nalanda, dismissed Revenue Clerk (Halka Karamchari),
Anchal Karyalaya, Harnaut, District Nalanda.

... .. Petitioner

Versus

1. The State of Bihar
2. The Divisional Commissioner, Patna.
3. The District Magistrate-cum-Collector, Nalanda.
4. The Circle Officer, Harnaut Anchal, District Nalanda.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Shrinandan Pd. Singh, Advocate
		Mr. Naresh Nandan, Advocate
For the Respondent/s	:	Mr. Sushil Kr. Singh, A.C. to A.A.G-10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 08-08-2019

Heard learned counsel for the petitioner and
learned counsel for the State.

2. In this case, the petitioner is challenging the order
of the District Magistrate, Nalanda, dated 03.05.2014, whereby
and whereunder the petitioner has been dismissed from the
service and that has been affirmed by the Appellate Authority
vide order dated 14.05.2015 passed in Service Appeal No.517 of



2014.

3. A short question has been raised by the petitioner that mere lodging of a criminal case and producing F.I.R. during departmental proceeding cannot be a basis for inflicting the punishment of dismissal from the service. In the present case, allegation has been made against the petitioner for taking bribe in the matter of mutation and he was caught by the Vigilance, led to lodging of criminal case, which was registered as Vigilance P.S. Case No. 18 of 2013 for the offence under Sections 7/13 (ii) and 13(i)(d) of the Prevention of Corruption Act, 1985. On that account, the petitioner was put under suspension, a departmental proceeding was initiated, in which the District Magistrate has recorded that F.I.R. itself shows the implication of the petitioner in the misconduct, is sufficient to arrive a finding against the petitioner.

4. F.I.R. is instituted for putting the criminal case in motion but the factual narration mentioned in the F.I.R. is required to be proved either in the criminal trial or in the departmental proceeding, merely production of an F.I.R. in the departmental proceeding *ipso facto* does not constitute the proving of the charge against the delinquent employee as it violates the basic principle of law that it can only be a piece of



evidence but, the contents has to be proved in properly constituted Tribunal or the Criminal Court. No person can be convicted in the criminal case merely lodging of the F.I.R. but, it further requires that those facts have been mentioned in the body of the F.I.R. has to be proved by the charge-sheet witnesses. In the present case, no witness has been produced to examine before the Inquiry Officer to substantiate the allegation in order to prove the charges against the petitioner. Furthermore, it appears that the inquiry has not been conducted in terms of Rule-17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, wherein elaborate procedure has been prescribed in what manner the inquiry has to be conducted but, but the records of this case does not show that the same has been followed.

5. In such view of the matter, the order contained in memo no.955 dated 03.05.2014 passed by the District Magistrate, Nalanda, as well as the order of the Appellate Authority dated 14.05.2015 passed in Service Appeal No.517 of 2014 are hereby quashed. The matter is remanded back to the respondents for initiation of fresh proceeding after the stage of furnishing the charge-sheet.



6. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	13.08.2019
Transmission Date	

