

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17107 of 2014

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Yogendra Prasad Son of Sri Brij Nandan Prasad resident of Mohalla - Lodipur
Lichi Bagan, P.S. Budha Colony, District – Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
3. The Principal Secretary, Education Department, Govt. of Bihar, Patna
4. The Director, Secondary Education, Govt. of Bihar, Patna
5. The Director, Administration, Education Department, Govt. of Bihar, Patna
6. The Joint Secretary, General Administration Department, Govt. of Bihar, Patna
7. The Under Secretary Cum Conducting Officer, General Administration Department, Govt. of Bihar, Patna.
8. The Section Officer, Section - II Cum - Presentation Officer, Education Department, Govt. of Bih
9. Sri Raj Kamal Son of Janakdhari Singh resident of village - Bhupattipur, P.O. Dhelawan, P.S. Ram Krishna Nagar, District - Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Shankar Pradhan, Sr. Adv. Mr. Sanjeev Nikesh, Adv. Mr. Ranjeet Choubey, Adv. Mr. Jainandra Kumar, Adv.
For the Respondent/s	:	Mr. Ravi Verma, AC to GP4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 21-05-2019

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

In this case, the petitioner is challenging the order of punishment contained in Memo No. 11782 dated 26.8.2014 passed by the Principal Secretary, General Administration Department, whereby and whereunder, in exercise of power, under Rule 14(XI)



of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 dismissed the petitioner from service.

The petitioner was working as Assistant in the Secretariat in the Department of Education. An allegation has been made that he was demanding Rs. 5,000/- from the respondent no.9, Sri Raj Kamal, for upgrading the scale of his father, as the respondent no.9 was not agreeable to make payment of Rs. 5,000/-, he approached to the Vigilance, a pre-trap memorandum was prepared, accordingly the verifier was appointed, which was verified by the verifier along with the petitioner that the petitioner was demanding Rs. 5,000/- and, accordingly, a trap team was constituted, accordingly, the respondent no.9 was handed over currency smeared with the Sodium Carbonate and, accordingly, the respondent no.9 handed over the same to the petitioner who kept it in the drawer of the table. In the meantime, the trap party caught his both hand but, he cleverly dropped the currency on the ground and had claimed that it was not his money but, when, both the hands of the petitioner was put in chemical, it turned pink, he was arrested, put behind the bar and, accordingly, a criminal case vide Vigilance P.S. Case No. 68 of 2012 was instituted against him. Later on, he was released on bail and the criminal case is pending for adjudication. In the meantime, the Appointing Authority also to



proceed with the departmental proceeding, accordingly, a departmental proceeding was initiated by serving the charge-sheet vide Memo No. 4489 dated 18.3.2013 attaching the Prapatra 'Ka' wherein allegation has been made that he was caught while taking Rs. 4,000/- as a bribery and, on that account, a criminal case being Vigilance P.S. Case No. 68 of 2012 was instituted for offence under Section 7, 13(2) read with 13(1)(d) of the Corruption Act, 1988 and prima-facie it appears that he has misused his authority and, accordingly, the proceeding was initiated in which four persons have been cited as witness, namely, Suresh Prasad, Md. Shams Sidiqui, Sri Ramayan Thakur and Sri Rajendra Paswan, their evidences were recorded, during enquiry each and every person has stated that they were not present at the time of trap as Suresh Prasad said that at the time of trap, he had gone for discussion with the Director, Secondary Education, Md. Shams Sidiqui has said that he had gone to attend Namaj, Sri Ramayan Thakur said that he was engaged in getting the photocopy of the document and Sri Rajendra Paswan has said that he had gone for distribution of the records. So, all the four witnesses have said that they were not present at the time of trap. On that basis, the enquiry proceeding was conducted, the Enquiry Officer in utter surprise has found the charges proved in misdirection himself in shifting



the onus of disproving the charge upon him whereas the primary responsibility of prosecution to prove the charge, either in a criminal case or civil case as fundamental principle is that the onus lies upon the prosecution to prove the charge but, the report itself disclose that the onus has been shifted upon Government servant i.e. the petitioner.

Learned counsel for the petitioner has submitted that the prosecution has failed to prove the charge by bringing home the substantial material evidence to show that trap was conducted in which he was caught while taking Rs. 4,000/- and it itself shows that the prosecution has not brought on record sufficient material to prove the charge against the petitioner, the four witnesses, who have come forward, turned hostile, giving his own explanation of convenience for being absent from there. So, there is no material at all before the Enquiry Officer to arrive to a finding that the charges have been proved. It is the duty of the prosecution at least to bring one person to substantiate the charge by narrating the incident of trap but, neither the pre-trap memorandum or the post-trap memorandum has been proved by the prosecution by bringing any member who was part of the trap team nor the Complainant has come forward to make his statement of demand of bribery and handing over the same. On the basis of enquiry report, the



petitioner filed his detailed show-cause but, all the facts have been ignored by the State authority and arrived to a finding of proving the charge against the petitioner.

In normal circumstance, this Court does not interfere in the finding arrived at by the competent authority because this Court is not exercising the power of appellate jurisdiction but, in a case, when there is no material at all or the material is against the weight of the evidence or no reasonable person can arrive to such a finding, in such circumstances, it is the obligatory for the Court to examine the matter and take decision in accordance with law. The relevant judgment in this line will be in the case of B.C. Chaturvedi Vs. Union of India & Ors. Reported in AIR 1996 SC 484, Union of India & Ors. Vs. P. Gunasekaran reported in 2015 (2) SCC 610, Bhrigunandan Sah Vs. State of Bihar & Ors. Reported in 2018(4) PLJR 550, Union of India Vs. H.C. Goel reported in AIR 1964 SC 364 and in the case of Ranvir Kumar Vs. State of Bihar & Ors. Reported in 2018 (2) PLJR 336 in which the principle of preponderance of probability has been dealt with which says that when the findings are perverse and it is the case of no evidence, certainly the Court will interfere with the decision.

In that view of the matter, this Court finds that neither the enquiry report can withstand the test of judicial scrutiny nor



the action thereafter. Accordingly, the findings of the Enquiry Officer including the dismissal of the petitioner are set aside. The State, if so like, they may conduct enquiry in accordance with law with the supporting material with respect to the charge leveled against the petitioner.

This Court has interfered with the order of the enquiry report itself on account of the fundamental lacking of evidence. Accordingly, in consequence, the petitioner is reinstated, the authority will decide entitlement of full salary for the period of suspension in terms of Rule 97 of the Bihar Service Code.

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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