

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16566 of 2016

Shakuntala @ Shakuntala Devi W/o- Dr. Shyam Babu Razak, Resident of
Civil Line, P.S.- Town, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Principle Secretary, Education Department, Government of Bihar.
3. Director Administration cum Additional Secretary, Education Department,
Govt. of Bihar.
4. Joint Secretary cum Chief Vigilance Officer, cum Inquiry Officer, Education
Department, Government

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Anil Kumar Singh Mr. Sunil Kumar Jha Mr. Rajat Kumar Tiwary
For the Respondent/s	:	Mr. Subhash Chandra Mishra, SC-16 Mr. Sameer Kumar, A.C. to SC-16

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 11-03-2019 The present writ petition has been filed by the petitioner
for quashing the order dated 30.07.2016, whereby and
whereunder the petitioner has been dismissed from service.

The brief facts of the case are that the petitioner was
appointed in the subordinate education service in the year 1991
and she joined on 31.03.1991 as Block Education Extension
Officer, Chapra. Subsequently, the petitioner was promoted to
the post of Area Education Officer in the Bihar Shiksha Sewa
Sambarg, where she joined on 07.07.2008. The petitioner was
performing her duties to the satisfaction of all concerned,



however, to the displeasure of the corrupt and indisciplined employees, hence such indisciplined employees of the Education Department had got together and hatched a conspiracy whereafter one of such employee, namely, Pradeep Kumar Singh misled the vigilance, leveling the allegation of demand of bribe as against the petitioner in connection with sanction of medical leave, for which in fact the competent authority is the Pramkukh of the concerned area and the Area Education Officer has no role to play in the matter of sanction of medical leave. On the basis of the complaint of the said Pradeep Kumar Singh, a trap was conducted by the Vigilance and the alleged bribe amount was actually not recovered from the possession of the petitioner herein but from beneath the table cloth. Thereafter, the petitioner was apprehended and a Vigilance P.S. Case No. 74 of 2010 was registered whereupon, by a notification dated 25.11.2010, the petitioner was put under suspension in contemplation of initiation of departmental proceeding.

On release of the petitioner from custody, she was again put under suspension vide Memo dated 19.01.2011, thereafter on 29.03.2011 *Prapatra-ka* was framed and the summary of allegation and the list of evidence was finalized by the Director



(Administration)-cum-Additional Secretary, HRDD, Patna, Bihar which was served on the petitioner herein and the main crux of the charges levelled against the petitioner was with regard to the petitioner having taken a sum of Rs. 1,000/- by way of bribe from the said Pradeep Kumar Singh on 30.10.2010 for the purposes of granting approval of his medical leave. By a resolution dated 04.04.2011 departmental proceeding was initiated and an Enquiry Officer was appointed. The petitioner had filed her reply, however, not even a single witness was examined by the respondents and in fact none of the witnesses appeared to depose during the course of the departmental enquiry despite the Enquiry Officer having written several letters. The Enquiry Officer had then submitted his enquiry report dated 18.10.2011, from which it is apparent that not a single witness had been produced to prove the factum of the petitioner having taken bribe. In fact the Enquiry Officer had concluded that since the matter pertaining to taking bribe by the petitioner herein was pending consideration before the Hon'ble Court, it is not possible to give any opinion, nonetheless the Enquiry Officer had concluded that the charges leveled against the petitioner regarding demanding bribe is not proved. The Joint Secretary-cum-Chief Vigilance Officer-cum-Enquiry



Officer by his letter dated 28.02.2012 had submitted a detailed letter to the Director (Administration)-cum-Additional Secretary, Education Department, Bihar, Patna stating therein that despite several letters having been written to the various police officials and other witnesses who were party to the trap laid by the Vigilance, none of the witnesses had turned up resulting in non-examination/cross-examination of the witnesses, hence no opinion can be given with regard to charge no. 1 (kha). It appears that the disciplinary authority without considering the aforesaid enquiry report submitted by the Enquiry Officer had issued a second show cause notice dated 14.02.2014 to the petitioner herein wherein it was stated that the Vigilance trap team had arrested the petitioner red handed taking bribe, hence it is apparent that the petitioner has not carried out her duties and responsibilities with honesty and integrity, as is expected of a public servant, hence the petitioner is guilty of violation of the provisions of the Public Servant Conduct Rules. In such view of the matter, the disciplinary authority had asked the petitioner to submit her reply to the second show cause notice dated 14.02.2014, while differing with the opinion of the Enquiry Officer on the aforesaid point and for the aforesaid reason the petitioner had then filed reply to the second show



cause notice, whereafter the disciplinary authority had passed the impugned order of punishment of dismissal dated 30.07.2016.

The learned senior counsel for the petitioner Shri Y.V. Giri has submitted that a bare perusal of the enquiry report would show that neither even a single witness nor any evidence has been adduced on behalf of the prosecution to prove the charges, hence in absence of any evidence, the disciplinary authority could not have passed the order of dismissal. It is further submitted that the said impugned order of dismissal dated 30.07.2016 is an unreasoned order and does not spell out any reason as to why and on what ground the petitioner has been found to be guilty so as to warrant her dismissal from the service.

The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Apex Court, reported in (2009) 2 SCC 570(Roop Singh Negi Vs. Punjab National Bank), and the one reported in (2010)2 SCC 772; AIR 2010 SC 3131(State of U.P. Vs. Saroj Kumar Sinha) as well as the judgments reported in 2000(3) PLJR 10 (Kumar Upendra Singh Parimar vs. B.S. Co-Opt Land Dev. Bank Ltd. & Ors.) and in 2018(3) PLJR 329 (Anand Kumar Vs. the State of Bihar & Ors.).



Per contra, the learned counsel for the respondents has admitted that no witnesses have been examined or for that matter any of the documents have been proved but it is submitted that since the petitioner was caught red handed by the Vigilance trap team taking bribe, the same amounted to violation of the provisions of the Public Servant Conduct Rules, hence the petitioner has been rightly dismissed vide the impugned dated 30.07.2016.

I have heard the learned counsel for the parties and have gone through the records of the case and I find from a bare perusal of the enquiry report dated 18.10.2011 and the letter of the I.O. dated 28.08.2012 that the prosecution i.e. the respondents herein have not only failed to lead any evidence / witnesses but have also failed to prove any document in support of their case. In this regard, it would be appropriate to reproduce paragraph nos. 26, 27, 28, 37 and 39 of the judgment rendered by the Hon'ble Apex Court in the case of Saroj Kumar Sinha (supra) herein below:-

26. *The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:*

“7. (x) Where the charged government servant does not appear on the date fixed in the



inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged government servant.”

27. *A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.*
28. *An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority / Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent*



official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

37. *We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.*

39. *The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in State of Punjab v. Bhagat Ram: (SCC p. 156, paras 6-8)*

“6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-



examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. *The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.*
8. *It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant.*



A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.”

It would also be appropriate to reproduce paragraphs no.12, 15, 16, 18 and 19 of the judgment rendered by this Court in the case of Kumar Upendra Singh (Supra) herein below:

“12. Under those rules there are detailed provisions for holding regular departmental enquiry. In holding of a departmental enquiry it is required to prove the charges against the delinquent employee by producing the departmental witnesses and by examining them by the enquiry officer. If the delinquent employee does not attend the enquiry even then the department has to prove the charge by examining the witnesses in support of its own documents. In the departmental enquiry no onus is cast upon the delinquent employee to prove the charges. The charges have to be proved by the department. If no witness is called by the department in support of the charges in that case it should be held that the department has not proved its case and in such a situation the enquiry officer cannot record the findings with regard to guilt against the delinquent employee just because the delinquent employee is absent.

15. Reference in this connection may be



made to the Constitution Bench Judgment of the Apex Court in the case of Union of India vs. H.C. Goel, reported in A.I.R. 1964 S.C. page 364.

His Lordships Gazendra Gadkar, J. His Lordship's then was, summarised the law in this respect as follows:-

"It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.

"16. Since the aforesaid principle laid down by the Constitution Bench of the Supreme Court has been subsequently followed in many other cases, and has not been departed from till today, this Court cannot accept the bald statement urged by the learned counsel for the respondent that since the charges are based upon the documents so no witnesses need be examined to bring home the charges.

18. This Court cannot accept this argument for the reasons already indicated when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand,



onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.

19. *Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See D.K. Jadav vs. J.M.A. Industries Ltd., reported in (1993)3 SCC page 259 : 1994(2) PLJR (SC)55.*

In view of the law laid down by the Hon'ble Apex Court and this Court it is clear that non-production of any evidence by the respondents during the course of the departmental enquiry has resulted in the respondent Authorities having failed to prove the charges against the petitioner herein. Similarly, neither the pre-trap witnesses nor the post trap witnesses nor the pre-charge memorandum nor the post trap memorandum were examined or proved during the course of departmental enquiry, hence the respondent Authorities have admittedly failed to prove the charges levelled against the petitioner herein and on account of



such failure on the part of the respondent Authorities, the charges have been found to have been not proved by the Enquiry Officer in his enquiry report dated 18.01.2011 and 28.08.2012, especially on the ground that there was no evidence on record to prove the charges levelled against the petitioner. In fact the second show cause notice dated 14.02.2014 issued to the petitioner herein also does not reflect that the disciplinary authority is in possession of any evidence so as to indict the petitioner herein and in fact it has been merely stated in the second show cause notice that since the petitioner was caught red handed taking bribe by the Vigilance trap and was arrested thereafter, the same has resulted in the petitioner not maintaining honesty and integrity in carrying out her duties and responsibilities, which is in violation of the provisions of the Public Servant Conduct Rules. In such view of the matter, the punishment imposed on the petitioner herein cannot be sustained since it is the requirement of law that when a person is thrown out of the employment, the same should be on the basis of a procedure which is reasonable just and fair, which is not the case herein. Moreover, this Court finds that the impugned order of dismissal of the petitioner from her service dated 30.07.2016 is merely a narration of the events which have taken place in the



present case, however, the same is not based on any evidence nor the same discusses any material found against the petitioner herein during the course of departmental enquiry nor the conclusion of the disciplinary authority of holding the petitioner guilty is based on any evidence whatsoever nor the said order of disciplinary authority is supported by any reason. Since the impugned order dated 30.07.2016 passed by the disciplinary authority has severe civil consequence, appropriate reasons were required to be assigned, however, the same has been passed on merely ipse dixit as also surmises and conjectures, apparently not supported by any evidence, hence the same is fit to be set aside being perverse and unsustainable in the eyes of law.

Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the order of punishment dated 30.07.2016 is quashed. Consequent to quashing of the order of punishment dated 30.07.2016, it goes without saying that the petitioner would be entitled to all the consequential benefits.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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