

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1012 of 2017

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Vikramaditya Singh, son of Late Kesho Prasad Singh, resident of village Kahen, P.S. Jagdishpur, District Bhojpur Ara, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Secretary, Labour Resources Department, Government of Bihar, Patna.
4. The Labour Commissioner, Bihar, Patna.
5. The District Magistrate, District Bhagalpur, Bihar.
6. The Joint Labour Commissioner, Bhagalpur, District Bhagalpur, Bihar.
7. The Deputy Labour Commissioner, Bhagalpur Division, District Bhagalpur, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan
For the Respondent/s : Mr .Anil Kr. Singh- GP26

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date : 08-07-2019

1. Heard the learned counsel for the parties.

2. The petitioner has challenged the order dated 11.06.2014 passed by the Labour Commissioner, Bihar contained in Memo No. 1614, whereby he has been dismissed from service with immediate effect on the basis of proved allegation of financial irregularities and defalcation as also the order dated 01.12.2016 passed by the Labour Commissioner, Bihar, confirming the earlier order of punishment.



3. The petitioner while serving as Block Development Officer, Sonahula Block in the district of Bhagalpur was made accused in a Vigilance case vide Vigilance P. S. Case No. 71 of 2013 for the offences under Sections 467, 468, 471, 420, 409 and 120(B) of the Indian Penal Code and Section 13(2) read with Section 13(1)(C)(d) of the Prevention of Corruption Act, 1988. The aforesaid F.I.R. was filed on the basis of a complaint regarding misappropriation in distribution of grants for diesel.

4. The petitioner was suspended and a departmental proceeding was initiated against him. The Enquiry Officer submitted his report dated 29.03.2014. On the basis of the aforesaid enquiry report, a second show-cause notice was issued to the petitioner, to which he replied in detail.

5. The Labour Commissioner, Bihar vide order dated 11.06.2014, referred to above, dismissed the petitioner from service with immediate effect.

6. It further appears from the records that the petitioner thereafter preferred an appeal under Rule 23 of the CCA Rules of 2005 before the Departmental Secretary. On



22.08.2016, the petitioner was informed that the regular service appeal preferred by him had been treated as revision under rule 28 of the CCA Rules, 2005 and was directed to present his case before the Labour Commissioner. Consequently, the petitioner appeared before the Labour Commissioner and pleaded his case. But the Labour Commissioner vide order dated 01.12.2016 rejected all the submissions of the petitioner and concurred with the order of dismissal passed by the erstwhile Labour Commissioner.

7. The orders impugned in the present petition have been challenged on several grounds. It has been urged on behalf of the petitioner that the enquiry report was inconclusive as it did not record any finding on the charge levelled against the petitioner. All that the enquiry report says is that the petitioner acted in a negligent manner and therefore could be held responsible for the irregularity only indirectly. It was therefore argued that the Enquiry Officer, who is a quasi-judicial authority had to apply his mind independently on the basis of evidence produced in support of the charges.



8. It has been pointed out by the learned counsel for the petitioner that the Presenting Officer never made himself available before the Enquiry Officer and the Enquiry Officer assumed the role of prosecutor as well. Thus, in the event of the statutory requirements as provided under rule 17(3) to 17(6) of the 2005 Rules not having been complied with, the entire required report stands vitiated.

9. It has further been argued that the disciplinary authority came to a totally different conclusion which is not based on the findings of the Enquiry Officer. The only evidence before the disciplinary authority was the F.I.R. and the report of the Vigilance, which were treated as conclusive evidence for establishing the guilt of the petitioner. Similar grounds have been raised while challenging the order passed in appeal / revision.

10. The learned counsel for the petitioner has referred to the decisions rendered in ***Uday Pratap Singh Versus State of Bihar [2017 (4) PLJR 195]***; ***Roop Singh Negi Versus Punjab National Bank [(2009) 2 SCC 570]***; and ***Sharda Devi Versus The Patliputra Central Cooperative Bank [2017 (1) PLJR***



859] and has submitted that the enquiry report is unsustainable in the eyes of law.

11. It has further been submitted that the reply of the petitioner / delinquent has not at all been considered by the disciplinary authority and the only basis of the disciplinary authority punishing the petitioner is the Vigilance Case.

12. On the aforesaid grounds, it has been urged that the order of dismissal and its confirmation in appeal / revision is bad in law and facts, and, therefore, be set aside.

13. From the perusal of the records as also the orders impugned, it appears that though the Presenting Officer did not present himself before the Enquiry Officer; nonetheless the Enquiry Officer analysed the materials before him and submitted his report. The impugned orders do refer to the materials available in the record that the amount of grant for diesel has been misappropriated. Only one beneficiary was found to be genuine of Sonahula village whereas 18 of the beneficiaries were found to be of different locality. An amount of Rs. 9,33,348/- has been shown to have been disbursed to persons who did not have the entitlement of receiving such



grant. Twenty two of the beneficiaries were found to be landless but against their names also, it was fraudulently shown that they own lands and the grant money was shown to be distributed to them. The persons having very small plot of land were shown to have bigger plot of land and money was shown to be given to him. One such instance is the case of the brother of Mukhiya who owned only 0.8 dismals of land but was shown to possess 2.40 acres.

14. The reply of the petitioner that confirmation of the beneficiaries being genuine persons was the responsibility of Vigilance Committee of the Panchayat and not of the Block Development Officer, was not accepted by the Enquiry Officer as also by the disciplinary and appellate authority. The orders impugned indicate that because the Block Development Officer is the main Administrative Officer at block level, it is squarely his responsibility to ensure that the grants-in-aid is properly distributed. The work of supervision is of the Block Development Officer. It was also held by the disciplinary as well as the appellate authority that in all the Vigilance Committee of the Panchayat, the Block Development



Officer/the petitioner is also a Member and therefore he could not be absolved of such responsibilities. D.C. Bill for disbursement of grant is prepared by the Block Development Officer only.

15. No doubt, there were some lapses in the proceedings before the Enquiry Officer, namely, the Presenting Officer not showing up during the enquiry and the department not leading any evidence to prove the charges; nonetheless the entire material on records was analyzed and it was found by the Enquiry Officer that the petitioner was responsible for such misappropriation / irregularity indirectly.

16. The wordings of the enquiry report have not been properly framed / drafted but the fact remains that the Enquiry Officer, on analyzing the duties of Block Development Officer and the irregularities which were apparent and writ large in the records, came to the conclusion that the reply of the petitioner that he was not responsible for any misappropriation or disbursement of government money to undeserving persons or fraudulent withdrawal and misappropriation of government



money was not correct and that the petitioner was responsible for such irregularities and misappropriation.

17. In *Roop Singh Negi* (supra), emphasis has been laid on the proof of the material before the Enquiry Officer as the Enquiry Officer performs a quasi-judicial function. For proving charge, it is not necessary that any evidence be compulsorily led. If the materials are available which could be the basis for coming to a definite conclusion, then only because witnesses were not examined, the entire enquiry report could not be thrown out as being bad in facts and law.

18. The submissions of the learned counsel for the petitioner is that the enquiry report and the impugned orders are based on the vigilance case is not correct. In none of the orders is there any reference of the vigilance case. The facts have been gleaned from the records and it has been found that the maximum amount of grant for diesel has been shown to be given to the persons who are not the residents of the locality or did not own land or own very small piece of land, but have been shown to own big plots of land.



19. The enquiry report as well as the impugned orders take note of the aforesaid materials against the petitioner and reflects a proper application of mind on their part. A departmental proceeding is a quasi-judicial function in which provisions of Evidence Act are not applicable. A Court exercising power of judicial review is no doubt entitled to consider whether the inference of misconduct of a delinquent is on the basis of relevant piece of evidence or not but it cannot substitute its own opinion. The Enquiry Officer as well as the disciplinary and appellate authority are required to arrive at their own conclusion on the basis of materials which could be said to point towards the guilt of the employee in its entirety.

20. On preponderance of probability, the Enquiry Officer has found the petitioner to be responsible for the misappropriation, which opinion finds echo in the orders impugned.

Since the misappropriation of public money is a grave misconduct, even the quantum of punishment cannot be said to be strikingly disproportionate on any score.



21. On perusal of the entire records, this Court is of the view that the Enquiry Officer has not based his report on any extraneous materials; the enquiry has been conducted with reasonable fairness of procedure; principles of natural justice have been followed substantially; and the order of punishment is absolutely proportionate to the guilt. There could be no clear evidence of misappropriation when fictitious persons are shown to be the beneficiaries of any scheme.

22. For the aforesaid reasons, no interference is required with the impugned orders.

23. The petition lacks merits and is dismissed.

(Ashutosh Kumar, J)

skm/-

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