

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15701 of 2012

Prasidhnath Tiwari Son Of Late Kantinath Tiwari Resident Of Village-
Sonkar, P.S.- Ramnagar, Distt.- West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Urban Development Department, Government Of Bihar, Patna.
3. The District Magistrate, West Champaran.
4. The Executive Officer, Nagar Panchayat Ramnagar, West Champaran.
5. The Board of Commissioner Through Its Chairman, Nagar Panchayat, Ramnagar, West Champaran.
6. The Permanent Standing Committee, Through Its Chairman, Nagar Panchayat, Ramnagar.
7. Sri Ajay Kumar, The Executive Officer, Nagar Panchayat Ramnagar, West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shekhar Singh, Adv.
For the Private Resp.	:	Mr. Ram Suresh Roy, Sr. Adv.
For the State	:	Mr.H.S. Roy, AC to AG

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 16-05-2019

Heard learned counsel for the parties.

In the present case, the petitioner prays for quashing the resolution dated 7.4.2012 of the Standing Committee, Nagar Panchayat, Ramnagar, whereby and whereunder, the petitioner was suspended and dismissed at one stroke and to quash the resolution no.4 (Kha) as contained in minutes of meeting of the Board of Nagar Panchayat, Ramnagar dated 22.6.2012 affirming the decision of the Standing Committee.



The petitioner was appointed as Clerk on 1.6.1986 in Nagar Panchayat, Ramnagar, West Champaran Daroga in the year 17.2.1988, subsequently he was appointed on regular basis on 17.2.1988 on the post of Tax Daroga against the sanctioned post and, later on, he was promoted to the post of Head Clerk cum Accountant on 1.6.1990. A purported proceeding was initiated against him for his misconduct and finally the petitioner was put under suspension as well as dismissed from service in one stroke, is the basic premise of the challenge which is completely farce, inasmuch as, the enquiry was not conducted properly on the charge which was alleged to have been inflicted upon him.

Learned counsel for the petitioner submits that the part of Annexure-B wherein large number of Prapatra 'Ka' has been attached was never served upon the petitioner which is reflected from the proceeding of the Empowered Standing Committee dated 16.12.2016 wherein it has been elaborately recorded that the petitioner has been dismissed without following the procedure as he was not served with any charge-sheet nor the enquiry proceeding has been conducted. So, the entire action is nullity in the eye of law.

Learned counsel for the Nagar Panchayat, Ramnagar, West Champaran submits that after due service of charge-sheet, the



enquiry was conducted and service has been dispensed with but, the records shows otherwise and the proceeding of the Empowered Standing Committee itself reflects the proceeding, as required under the law, having not done and, without following the same, the petitioner has been terminated from service.

Having considered the rival contentions of the parties, it appears that the enquiry has neither been done in a proper manner nor charge-sheet has been served properly upon the petitioner but, merely on the basis of presumption and assumption, the entire action has been taken against the petitioner. Malafide and maliciousness would not play role in the event the charges are proved against the delinquent. This Court, under the judicial review, will only examine the decision making process not the decision and, on that touchstone, this Court finds the enquiry proceeding has not been done in a proper manner and wrongly the petitioner has been terminated from service.

In that view of the matter, the termination of the petitioner is set aside and the entire proceeding will be treated to have been wiped out, a fresh proceeding should be conducted by the Nagar Panchayat, Ramnagar but, it is made clear that the Prapatra 'Ka' which is attached with Annexure-B' as per Ram Nagar Gram Panchayat is the Memo of Charge, will be treated to



have been served upon the petitioner. If the petitioner wants to give reply or explanation, whatever he likes in any form, he may file the same, within a period of three weeks from today and he will remain present before the Executive Officer of Nagar Panchayat, Ramnagar on 12th June, 2019 at 10.30 AM, the Executive Officer, if so like, may give additional charge-sheet to the petitioner. In that event, the petitioner will be at liberty to file explanation within a period of 15 days thereafter. If the petitioner requires any document, he will file an application with the relevancy of the document and only the relevant document will be supplied to him and the Disciplinary Authority would appoint the Enquiry Officer as well as the Presenting Officer, on the date fixed, he will remain present and cooperate in the proceeding, in failure to participate, the Enquiry Officer will be at liberty to proceed ex-parte and will submit a report to the Disciplinary Authority cum Appointing Authority and, accordingly, the proper authority will act in accordance with law.

The Enquiry Officer will not grant any unnecessary indulgence unless it is so required.

The entire proceeding will be completed within a period of five months from the date of first appearance of the petitioner before the Executive Officer.



Any amount will depend on the final outcome of the enquiry proceeding.

With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.05.2019
Transmission Date	

