

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20571 of 2016

Ram Swarup Prasad, S/o Late Ram Bechan Prasad, Resident of Village-
Mohan Bigha, Post- Office- Prabalpur, Police station- Ben, District- Nalanda,
As Ex. - Panchayat Secretary, Bilari Gram Panchayat, Block- Katrisarai,
District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar through its Principal Secretary, Department of Panchayati Raj, Bihar, Patna.
2. The District Magistrate-cum-Collector, Nalanda at Biharsharif.
3. The Senior Incharge Officer, District Panchayat Section, Nalanda at Biharsharif.
4. The Sub-Divisional Officer, Rajgir, Nalanda.
5. The Block Development Officer, Block- Katrisarai, District- Nalanda.
6. The Mukhiya, Gram Panchayat Raj Bilari, Block- Katrisarai, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Premchandra Yadav
For the Respondent/s : Mr.Kameshwar Pd. Gupta- Gp10

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 26-07-2019

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

In this case, the petitioner is challenging the order
passed by the Committee comprising of District Magistrate,
Nalanda, D.D.C., Nalanda and District Panchayati Raj Officer,
Nalanda, whereby and whereunder the petitioner has been
awarded the punishment of compulsory retirement.

The petitioner was appointed as Panchayat
Secretary. At the relevant time, was posted at Gram Panchayat
Raj Rasalpur. The charges have been framed against the
petitioner is that he is not keeping his residence within the block



or the headquarters of the Panchayat, which has been treated as a misconduct. Another charge has been framed that he was not taking any interest with respect to Government work, especially in the matter of pension and not properly maintaining the data of death and birth as well as he was in habit of dis-obeying the order of his superiors. It has further been stated that for the administrative reason and in the public interest he was asked to hand over the charge, but he failed to abide by the direction, which is violation of Rule- 3(1)(2)(3) of the Bihar Government Servant Conduct Rules, 1976. In that connection, a show-cause was asked but the petitioner did not file any explanation and also did not participate in the proceeding, that resulted into ex parte inquiry and the Committee arrived to a finding that as the petitioner has not filed any reply to the show-cause and failure to submit his explanation itself shows his negligence in the matter, ultimately, inflicted the punishment of compulsory retirement.

On perusal of the departmental proceeding, it appears that ex-parte inquiry has been conducted and during inquiry neither any witness has been examined nor the connected papers have been brought to prove the charge against the petitioner. Merely, in absence of reply of the petitioner, the



charges have been treated to be proved. The law is settled that even in case of ex parte enquiry, the prosecution is required to bring on record the documentary as well as oral evidence to prove the charge, which has been alleged against the petitioner. In the present case, the inquiry proceeding itself shows the absence of evidence in the nature of documentary or oral, in such view of the matter, the entire proceeding is vitiated.

In such view of the matter, the enquiry report as well as the order of punishment vide memo no.514 dated 20.08.2016 are set aside and the matter is remanded back to the respondents to conduct an enquiry in accordance with law after giving proper hearing to the petitioner and bringing the materials in support of the charges. However, any payment would dependent on the outcome of the departmental proceeding.

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

(Shivaji Pandey, J)

Pawan/-
V.K. Pandey

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	31.07.2019
Transmission Date	

