IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14379 of 2017

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Aditya Rajhans, S/o Sri Dashrath Rajhans, R/o Flat No.402, Gayatri Apartment, Bbari Khanjarpur, P.S.-Barari, Town and District-Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Reviewing Authority, through the Principal Secretary, Labour Resources Department, Government o
4. The Disciplinary Authority through the Principal Secretary, Labour Resources Department, Govt. of Bihar.
5. The Labour Commissioner, Labour Resources Dept., Govt. of Bihar, Patna.
6. The Officer on Special Duty (Additional Collector Level), Labour Resources Department, Govt. of Bihar, Patna.
7. The Enquiry officer-Cum-the then Director, Employment and Training, Govt. of Bihar, Patna, namely, Mr. Gopal Meena, I.A.S.
8. The Presenting Officer-Cum-the then Under Secretary, Labour Side, Labour Resources Department, Govt. of Bihar, Patna.
9. The Under Secretary, Labour Resources Dept, Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Purushottam Kumar Jha, Advocate Mr. Avinindra Kumar Jha, Advocate
For the Respondent/s	:	Mr. Rakesh Prabhat, AC to SC-21

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 15-01-2019

In the present case, the petitioner is challenging the Memo of Charge dated 10.11.2015 claiming that the same has not been issued by the proper authority. Further, he is challenging the Inquiry Report dated 01.07.2016 whereby and whereunder inquiry officer has found the charge no.1 partly proved, charge nos. 2 and 3 not proved and charge no. 4 proved. He has further made a prayer for quashing the order of punishment dated 06.04.2017 passed by the Principal Secretary, Labour Resources Department, Government of Bihar whereby and whereunder the petitioner has been inflicted with the punishment of stoppage of two increments with non-cumulative effect and also made a prayer for quashing the order dated 07.07.2017 whereby and whereunder the revision application dated 20.04.2017 preferred by the petitioner against the order dated 06.04.2017 has been rejected.

At the relevant time, the petitioner was serving as Assistant Labour Commissioner and posted at Munger. The Labour Commissioner vide Memo No.3608 dated 23.11.2015 served the charge sheet upon the petitioner. In charge no.1, it has been mentioned that Late Basudeo Kumar superannuated on 31.12.2012 died on 8.02.2015 and he was not paid his retirement benefit for 2 years and 6 months, though under policy, in the government is to make payment of retiral dues in priority. In charge no.2, it has been mentioned that Neelam Devi, wife of Late Basudeo Kumar has lodged an FIR on 19.05.2015 at Naya Ram Nagar Police Station in which, apart from the petitioner, two more persons have been made accused for obtaining signature on the plain paper. In charge no.3, it has been mentioned that the petitioner has demanded Rs.50,000/- from Neelam Devi, wife of Late Basudeo Kumar which was informed by her vide letter dated 01.08.2015. In charge no.4, it has been mentioned in connection with the payment of retirement dues, the Additional Secretary made an inspection and supervision of the office of the petitioner and he put his signature and gave a date dated 24.04.2015 but by manipulating below the aforesaid order, the petitioner has also recorded the order dated 16.06.2014. The petitioner, after receipt of the charge sheet, filed his explanation in which he has taken a plea that he has altogether paid Rs.8,25,820/- to late Basudeo Kumar in different headings of retiral dues and it appears that Basudeo Kumar did not inform to his second wife Neelam Devi and the first son of Basudeo Kumar purposefully has created a wrong genealogical table and placed before the petitioner mentioning that Neelam Devi was the only wife of Basudeo Kumar, whereas, the fact is that late Basudeo Kumar had two wives and five children, from the first wife, Basudeo Kumar got two children and from the second wife Neelam Devi, he got three children. It is wrong to say that the petitioner had not made any payment under the category of retirement benefits, whereas, the fact is that he had paid a quite high amount to Basudeo Kumar under the different heads of retirement dues and he had taken steps for obtaining the service book and comment on the rest of the amount as details of deduction of GPF and other amounts were lying in the office of the Assistant Labour Commissioner, Agriculture and further he has taken a plea that he has assigned the duty to Arun Kumar to bring his service book and even after sending the four registered letters, the details of deduction under the GPF amount was not provided to the present petitioner but the said service book was handed over to Anil Kumar and, in turn, Anil Kumar had handed over the said service book to him on 9.05.2015. Anil Kumar is the second son from his first wife and in that manner Anil Kumar has kept the service book with himself for 18 months with a view that the rest of amount of retiral dues should not be given to Neelam Devi and he has taken a further plea that the delay payment to Basudeo Kumar is attributable to two sons of Late Basudeo Kumar and after receipt of the service book, he was given the money of Rs.2,66,260/- and, accordingly, the payment under GPF category has been made. With respect to the charge no.2 of lodging a criminal case, he has stated that no FIR has been lodged by the police and with respect to charge no.3, he has taken a plea that the inquiry was conducted by the Superintendent of Police, Munger and he has obtained the report under RTI Act. On perusal of the same, the allegation made against the petitioner is completely misdirected and wrong. With regard to charge no.4, he has taken a plea that the allegation of tampering of the record of Basudeo Kumar is completely incorrect as on perusal of the record, it would appear that a letter dated 16.06.2014 was issued from the office which was put in navigation on 19.06.2014 vide postal registration no. ARF082675673IN dated 19.06.2014. The letter as well as registration certificate is available with the original record of Late Basudeo Kumar and, as such, the allegation which has been made of tampering with the record is completely not-sustainable and illegal. When the disciplinary authority was not satisfied, the petitioner was put to the departmental proceeding and, accordingly, at the first instance, Dev Nandan Yadav, Additional Secretary was made the Inquiry Officer and Arun Kumar No.1, Under Secretary was made as Presenting Officer but the objection raised by the petitioner, the Inquiry Officer was replaced by Gopal Meena, Director, Employment and Training, who conducted the inquiry in which he has given a written defence before the Inquiry Officer detailing his defence in which plea has been taken that Basudeo Kumar was already paid Rs. 8,25,820/-. On the charge nos. 2 and 3, he has taken plea that both the charges cannot be proceeded on account of fact that no such FIR has been lodged against the petitioner or any other person with respect to demand of money of Rs. 50,000/- from Nilam Devi. With respect to the fourth charge, he has reiterated the same stand that he has not manipulated the order but he has taken action and also sent the letter requesting to supply the service book of Late Basudeo Kumar including other details. The Inquiry Officer has submitted the report in which he has found the charge no.1 partly proved, charge nos. 2 and 3 not proved and charge no.4 proved. After that the petitioner was served second show cause notice which he replied by letter dated 09.12.2016 whereafter the Secretary, Government of Bihar vide resolution dated 06.04.2016 has inflicted the punishment of stoppage of two increments with non-cumulative effect.

Learned counsel for the petitioner submits the charge-sheet itself is defective as his appointing authority is the State Government, through the Governor, whereas charge-sheet has not been issued on the approval of Minister concerned nor on the direction of the Governor and in support of his submission, he has placed reliance on the judgment reported in ***(2014) 1 SCC 351 (Union of India Vs. BV Gopinath)*** as well as the order passed by the Hon'ble Supreme Court in the case of ***State of Tamilnadu Vs. Pramod Kumar, IPS & Anr. (Civil Appeal No. 8427-8428 of 2018)*** and he has further stated that inquiry proceeding suffers from gross illegality as Inquiry Officer has not followed due procedure of law in conducting the inquiry proceeding as the charges have not been proved by any oral evidence but merely the charges has been found proved on the basis of record produced before him. He has submitted that unless record is proved through witness, cannot be piece of material evidence as the petitioner did not get opportunity to put the witnesses in cross-examination, in such view of the matter, it is obligatory on the part of the authority concerned to get it proved by an oral evidence, which has not been done. In support of his submission he has placed reliance on the judgment reported in ***(2009) 2 SCC 570 (Roop Singh Negi Vs. Punjab National Bank & Ors.)***, wherein the Hon'ble Supreme Court has held that it is the duty of Inquiry Officer to ensure examination of witness as well as bringing documentary evidence on record and further said that charges against the petitioner has not proved on merit as it is apparently clear that the first charge is with regard to non-payment of any amount under the retiral dues for two years and six months, but in fact Rs. 8,25,820/- was paid to him even then the charges have been found partly proved by enlarging the scope of the charge. He has further submitted that it is not within the domain of the Inquiry Officer to enlarge the area of charge and arrived to a finding against the Government servant. Inquiry Officer has only duty to give a finding on the charges framed against him, the scope of the charge-sheet cannot be enlarged and with respect to charge no.4, he has submitted that the record itself shows that the petitioner has rightly recorded the order dated 16.06.2014 and above that “Seen” has been made with the date 24.04.2015 below the order dated 30.08.2013. He has further submitted that the letter no. 460 was issued to the Assistant Labour Commissioner, Agriculture, Gaya with a request to make avalaible the service book of Late Basudeo Kumar which is corroborated from the postal receipt as well as entry made in the issue register, whereas counsel for the State has submitted that there is no fault in the inquiry conducted against the present petitioner. So far charge no.1 is concerned, of course he has paid Rs. 8,25,820/- but certainly rest amounts were not paid till the issuance of the charge-sheet. Further he has submitted that with regard to charge no.4, on perusal of the order sheet itself depicts that order sheet has been tampered as no normal person while making an inspection would put his signature of “Seen” above the order dated 16.06.2014 but certainly he would have been given his note below that but the order sheet itself reflects that he has put his inspection note on 24.04.2015 and order sheet has been written on 16.06.2014 itself corroborates and reflects tampering has been made.

This Court has asked the counsel for the State to produce the original records concerning payment to Late Basudeo

Kumar, which has been produced before this Court and this Court has examined the records related to the alleged tampering of the order sheet.

From the charge-sheet, it is very much clear that the allegation has been made that no payment of retiral dues has been made to Late Basudeo Kumar for two years and six months, whereas the fact is that admittedly Rs. 8,25,820/- was paid to Late Basudeo Kumar and there is no such allegation, failure to make entire payment. So, that is why, this Court is of the view that the charges made against the petitioner is confined to non-payment of retiral dues has not been substantiated and the Inquiry Officer was obliged to confine his inquiry with respect to charges mentioned in the charge sheet as has no power to enlarge the scope of the charges mentioned in the charge sheet and, as such, this Court holds that the finding recorded by the Inquiry Officer with respect to the charge no.1 is not sustainable and with respect to the charge no.4 this Court examined the order sheet and also the letter which has been issued to the ALC, Gaya requesting to supply the service book of Late Basudeo Kumar through registered post, has been mentioned in the issue register placed before this Court for the perusal. So the records which itself shows that the petitioner had taken steps for securing the service book of Late Basudeo Kumar for payment of other retiral dues. This aspects of the matter has not been examined neither by the Inquiry Officer nor by the disciplinary authority and arrived to a finding against the petitioner and this Court is of the view that the charges which have been found proved with respect to the charge no.4 is also not sustainable.

Accordingly, the memo of charge dated 10.11.2015, inquiry report dated 01.07.2016, order of punishment dated 06.04.2017 and order dated 07.07.2017 are set aside.

This writ petition stands allowed.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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