

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7631 of 2016

Mithilesh Kumar Son of Ram Janam Prasad, Resident of Village- Parahia,
P.O.- Khijhwa, P.S.- Raghunathpur, District- Siwan.

... .. Petitioner

Versus

1. The State Of Bihar and Ors
2. The Secretary, Department of Labour Resources, Govt. of Bihar, Patna.
3. The Labour Commissioner, Bihar
4. The Assistant Labour Commissioner Research, Labour Resource
Department, Government of Bihar, Patna

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Ranjeet Kumar with
	:	Mr.Jai Kishore Sharma
For the Respondents	:	Mr.Vikash Kumar (SC 11)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 31-08-2021

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. At the relevant point of the time, the petitioner was working as a Block Development Officer, Parwalpur, in the District of Nalanda. On the basis of a complaint filed by one Mohan Lal, *Mukhiya* (the complainant) regarding demand of bribe being made by the petitioner, the Vigilance Investigation Bureau had conducted a raid. The petitioner was apprehended on the allegation of having been caught red-handed while accepting a bribe of Rs.10,000/-. He was put under suspension, as he was taken into custody. He was subsequently enlarged on bail and was allowed to join his post. However, he was again put under



suspension in contemplation of a departmental proceeding. A memo of charge was served upon him. The charge against the petitioner read as under:-

“श्री मिथिलेश कुमार, श्रम प्रवर्त्तन पदाधिकारी सम्प्रति तत्कालीन प्रखंड विकास पदाधिकारी, परवलपुर, पिता - श्री रामजन्म प्रसाद, साकिन - बड़हिया, थाना - रघुनाथपुर, जिला - सिवान को रु0 10,000/- (रु0 दस हजार) रिस्वत लेते हुए रंगे हाथ निगरानी दल के द्वारा पकड़े जाने के फलस्वरूप निगरानी थाना काण्ड संख्या-10/11 दिनांक-04.02.2011 में दिनांक- 03.02.2011 संध्या 7.00 बजे कारागार भेजा गया था।”

3. Evidently, the petitioner's arrest by the team of Vigilance Investigation Bureau while accepting bribe was the only allegation against the petitioner, which had led to registration of Vigilance P.S. Case No. 10/2011 against him. From the charge memo, it is evident that vague reference to letters issued by the Rural Development Department, Vigilance Department and certain orders passed by this Court was made in the list of documents on which the department intended to rely to establish the charge against the petitioner in the departmental proceeding. The petitioner submitted his written statement of defence denying the charge framed against him, a copy of which has been brought on



record by way of Annexure-5 to the writ application. During the enquiry, one Ramdev Yadav (an independent witness) was examined by the department. A copy of his statement has been brought on record by way of Annexure-6 to the writ application. Though he accepted that he learnt about the occurrence on the subsequent date, he said that he did not know anything on the date when the occurrence had taken place on 03.02.2011. The occurrence is said to have taken place in the rented house of one Parshuram Singh at Parwalpur, in which, the petitioner was residing as a tenant. Ramdev Yadav is next-door neighbour of the said Mohan Lal, *Mukhiya*, the complainant.

4. The Enquiring Authority submitted his report on 14.08.2013 wherein he concluded that the charge to the effect that Vigilance P.S. Case No. 10/2011 was registered on 04.02.2011 and the petitioner was apprehended allegedly while taking bribe was proved but the Enquiring Authority but refrained from recording a finding that the petitioner was arrested red-handed while accepting the bribe, the same being subject matter of trial pending before a court of competent jurisdiction. He further concluded that on the basis of evidence of the independent witness and other documents made available during the departmental enquiry, it could not be established that the petitioner had made any demand for bribe for granting administrative approval of a work under BRGF



(Backward Region Grant Fund) scheme since no such document in relation to construction of a community building under BRGF scheme was produced till 03.02.2011, when he was arrested.

5. The petitioner was, however, put to a second show-cause notice through letter no. 163 dated 15.01.2014 issued by the Labour Commissioner, Government of Bihar (the Disciplinary Authority). In the second show-cause notice dated 15.01.2014, the Labour Commissioner recorded that in view of the report of the Enquiring Authority, the charge against the petitioner of making demand of bribe money and his subsequent arrest red-handed by the Vigilance Investigation Bureau stood *prima facie* proved. Accordingly, the petitioner was asked to submit his explanation, as to why a major punishment be not imposed upon him in accordance with the provisions under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. The petitioner submitted his reply stating specifically that the Enquiring authority did not hold the charge against the petitioner proved and, therefore, no punishment could be imposed upon him on the basis of the said report of the Enquiring Authority. The petitioner further reiterated in his reply dated 30.01.2014 to the second show notice that if the Disciplinary Authority intended to differ from the finding recorded by the Enquiring Authority, he ought to have issued a show-cause notice with tentative notes of disagreement



with the said report of the Enquiring Authority. Without giving the petitioner an opportunity to satisfy the Disciplinary Authority that the Enquiring Authority had rightly recorded his findings in the enquiry report that the charge against the petitioner could not be established in the departmental enquiry, no punishment could be imposed on him. By an order dated 05.02.2014 (Annexure-1) the Labour Commissioner, Bihar imposed upon the petitioner punishment of dismissal from service, which has been put to challenge in the present writ application.

6. The petitioner had preferred an appeal against the order of dismissal which has been dismissed by an order dated 16.10.2014 (Annexure-2) passed by the Secretary, Labour Department, which is also under challenge in the present writ application.

7. Learned counsel appearing on behalf of the petitioner has submitted that there was absolutely no evidence led before the Enquiring Authority on the basis of which, the Enquiring Authority could have reached to a conclusion that the charge against the petitioner of demanding bribe or accepting bribe stood proved. The only charge, he contends, which was levelled against the petitioner for the purpose of departmental enquiry was that he was arrested by the raiding team of the Vigilance Investigation Bureau on the charge of accepting bribe of Rs.10,000/-. He has submitted that



there cannot be any denial of the fact that the petitioner was apprehended by the team of the Vigilance Investigation Bureau but the allegation that he had demanded or accepted bribe is absolutely incorrect. The petitioner was maliciously framed at the instance of local *mukhiya* for his personal gains, he contends.

8. Be that as it may, evidently, the Enquiring Authority specifically recorded in his report that the allegation of demand or acceptance of bribe could not be gone into in the departmental enquiry. In such circumstance, he submits that since the finding of the Disciplinary Authority that the charge against the petitioner stood proved is based on no evidence, the impugned order deserves interference by this Court.

9. It has been argued on behalf of the State of Bihar that considering the gravity of charge against the petitioner and overwhelming materials available in the disciplinary proceeding, imposition of punishment of dismissal from service is wholly justified.

10. I have carefully perused the report of the Enquiring Authority, statement of the sole witness examined for the department at the departmental enquiry, the second show-cause notice issued by the Disciplinary Authority on the report of the Enquiring Authority and final order passed by the Disciplinary Authority. I find force in submission made on behalf of the



petitioner that the prosecution did not lead any oral evidence in support of the charge that the petitioner had demanded bribe money or was arrested while accepting bribe. No member of the raiding team was examined. The complainant was not examined. No person present at the place of occurrence was examined. In such circumstance, the Enquiring Authority had rightly recorded that the charge against the petitioner of demand of bribe money was not established. As a matter of fact, there was no such charge against the petitioner in the departmental proceeding.

11. Peculiarly, the Disciplinary Authority proceeded with a completely misconceived notion that the Enquiring Authority had found the charge against the petitioner proved during the departmental enquiry. The petitioner had rightly taken a plea in his reply to the second show-cause notice that if the Disciplinary Authority intended to differ with the report of the Enquiring Authority, he ought to have recorded his tentative notes of disagreement, disagreeing with the report of Enquiring Authority and ought to have given the petitioner an opportunity to deal with the points of disagreement with the report of the Enquiring Authority. On the other hand, the disciplinary Authority ignoring completely the fact that the charge was not found established during the departmental enquiry, by the Enquiring Authority, imposed the order of punishment of dismissal from



service, which is apparently result of complete non-application of mind.

12. The impugned order passed by the Disciplinary Authority dated 05.02.2014 imposing punishment of dismissal from service on the petitioner and the order dated 06.10.2014 passed by the Appellate Authority dismissing the petitioner's appeal against the order of dismissal are unsustainable, arbitrary and illegal. The said orders are accordingly set aside. Since this Court is interfering with the impugned order of dismissal on the ground of no evidence available in support of any charge of misconduct presented at the time of departmental enquiry, it is directed that consequences of quashing of the order of dismissal shall follow. It is accordingly directed that the respondents shall be required to proceed as if no order of dismissal was ever passed against the petitioner.

13. It seems that the petitioner has attained the age of superannuation. Therefore, there is no requirement of any direction for his reinstatement. He shall, however, be treated to be in service from the date of the order of dismissal for all purposes including arrears of salary and pensionary benefits in accordance with law.

14. This application is accordingly allowed.

15. It is, however, observed that the respondents shall be at liberty to take appropriate action against the petitioner in



accordance with law in future based on the outcome of the criminal case registered against him in relation to the occurrence in question.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.09.2021
Transmission Date	N/A

