

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4005 of 2018

Subhash Chandra Sinha son of Late Jaldhari Prasad resident of mohalla
Mallah Toli, P.S. Jehanabad, District Jehanabad.

... .. Petitioner

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Land and Revenue Department, Bihar, Patna.
3. The Commissioner Tirhut Division, Muzaffarpur.
4. The District Magistrate, Vaishali.
5. The Circle Officer, Raghapur, Vaishali.

... .. Respondents

Appearance :

For the Petitioner	:	Ms.Mahasweta Chatterjee
	:	Mr.Samir Kumar Sinha
For the Respondents	:	Mr.Dhurjati Kumar Prasad (GP 14)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 29-07-2021 This matter has been taken up for hearing online
because of COVID-19 pandemic restrictions.

2. The petitioner seeks quashing of an order dated 17.07.2017 passed by the District Magistrate, Vaishali whereby he has been dismissed from service. The petitioner's Service Appeal No. 125 of 2017 against an order of dismissal has been dismissed by the Commissioner, Tirhut Division, Muzaffarpur by an order dated 16.01.2018, which is also under challenge in the present writ application. The petitioner is also seeking benefits consequential to quashing of the impugned orders.

3. I have heard Ms. Mahasweta Chatterjee, learned



counsel for the petitioner and Mr. Dhurjati Kumar Prasad, learned GP-14 appearing on behalf of the State of Bihar.

4. A counter affidavit has been filed on behalf of the State of Bihar. At the very outset a preliminary objection has been raised by Dhurjati Kumar Prasad, learned GP-14 appearing on behalf of the State on the ground of availability of alternative remedy of revision under Rule 28 of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as the Bihar CCA Rules) which the petitioner has not availed before filing this writ application and, therefore, according to him, it deserves to be dismissed.

5. In response to the said preliminary objection Ms. Chatterjee, learned counsel for the petitioner has argued that since the matter has remained pending before this Court since 2018 and the pleadings are complete, at this stage, the petitioner may not be relegated to the revisional forum. She has further submitted that in any view of the matter, since palpably, the order of dismissal is based on no evidence adduced during the departmental proceeding and is, therefore, patently illegal, the Court, despite there being alternative statutory remedy of revision, may entertain this application in the interest of justice. She has submitted that there is no bar for this Court to entertain



a writ application under Article 226 of the Constitution of India despite availability of alternative remedy when it is noticed that the order is perverse, without any evidence and patently illegal.

6. On perusal of the undisputed materials on record and the fact that the matter has remained pending before this Court since 2018, I find force in the submission made on behalf of the petitioner that this writ application cannot be said to be not maintainable. The preliminary objection raised on behalf of the State of Bihar is accordingly overruled.

7. Certain facts are not at all in dispute. The petitioner at the relevant point of time was posted as Revenue Clerk (*Rajaswa Karmachari*) of Halka No. 1 of Raghopur Anchal in the District of Vaishali from 2008 to 2015. It is alleged that he was found to have created fake *jamabandi* numbers in favour of many persons in respect of lands abutting the river Ganga, for securing illegal personal gains. This led to initiation of a departmental proceeding against him with the issuance of charge-sheet dated 30.11.2016. He was subsequently put under suspension. A Presenting Officer and an Enquiring Authority were appointed. The charge memo has been brought on record by way of Annexure-1 to the writ application. The petitioner was charged of creating fake *jamabandis* in conspiracy with



land *mafia*, for personal gains, in favour of persons named in the charge memo. It was alleged that his conduct caused huge loss to the state exchequer and obstruction in natural course of the river Ganga by creating fake *jamabandis* in favour of persons in respect of the land adjoining to the river.

8. In order to prove the charge, the Department relied on certain documents, as have been indicated in the charge memo itself.

9. The petitioner had responded to the charge memo by filing his written statement of defence denying the allegation and justifying his conduct stating mainly therein that *jamabandis* were already existing before he had joined the post and he had just issued rent receipts, on the basis of already created *jamabandi*.

10. The petitioner has brought on record the entire order sheet of the disciplinary proceeding from which it appears that the matter was taken up by the Enquiring Authority for the first time on 03.04.2017. On 15.04.2017, the Presenting Officer sought for short adjournment for filing his written response. On 02.05.2017, the petitioner submitted his written notes in favour of his defence before the Enquiring Authority. The presenting officer, however, did not submit his opinion. On 13.05.2017, the



Presenting Officer submitted his opinion whereafter the matter was adjourned to 27.05.2017. On 27.05.2017, the Enquiring Authority closed the enquiry. The Enquiring Authority submitted his report on 30.05.2017 holding all the charges against the petitioner to have been proved. The petitioner was admittedly supplied a copy of the report of the Enquiring Authority and was asked to submit his response in respect of the findings recorded by the Enquiring Authority. The petitioner submitted his response reiterating the plea which he had taken in the written statement of defence. The Disciplinary Authority finally passed the impugned order dated 17.07.2017 accepting the report of the Enquiring Authority. It appears that the Disciplinary Authority required personal attendance of the petitioner before passing the impugned order and during that course, he made certain queries from the petitioner and his reply to the said queries have also been treated to be the grounds for treating the charges against the petitioner to have been proved. The petitioner's appeal came to be dismissed by the Commissioner, Tirhut Division by an order dated 16.01.2018.

11. Assailing the legality of the said two orders passed by the Disciplinary Authority and the Appellate Authority, Ms. Mahasweta Chatterjee, learned counsel for the



petitioner has argued that it is a case of no evidence inasmuch as no evidence, oral or documentary was at all adduced during the departmental enquiry. She has submitted that though the charge memo referred to several documents on which the Department intended to rely in support of the charges but none of the documents was ever produced by way of evidence during the departmental enquiry. She has accordingly contended that the findings of the Enquiring Authority and Disciplinary Authority are based on no evidence and, therefore, perverse. She has contended that the Appellate Authority also did not consider these aspects while rejecting the petitioner's appeal.

12. *Per contra* Mr. Dhurjati Kumar Prasad, learned counsel appearing on behalf of the State of Bihar has drawn my attention to the order passed by the Disciplinary Authority and has submitted that the Disciplinary Authority had given the petitioner an opportunity of hearing before passing the order of dismissal and during that course certain queries were made by the Disciplinary Authority. The reply made by the petitioner during the said course is, as a matter of fact, admission of the charges framed against him and, therefore, there is no illegality in the order passed by the Disciplinary Authority, considering seriousness of the charge.



13. On careful examination of the documents available on record, I find force in submission made on behalf of the petitioner that it is a case of no evidence. It is apparent from the order sheet of the departmental enquiry which has been brought on record by way of Annexure and has not been disputed that there was no evidence at all adduced during the course of enquiry. It is not in dispute that the petitioner had in his written statement of defence, denied the allegations made against him. The Enquiring Authority, however, chose to prepare his report on the basis of the written statement of defence of the petitioner, a written notes submitted by him during the course of the departmental enquiry and the opinion (*mantavya*) of the Presenting Officer, nothing else. There is no material to suggest that the documents on which, the department intended to rely, as disclosed in the charge memo, were produced during the departmental proceeding by way of evidence in any manner.

14. For the reasons aforesaid, the impugned orders cannot be sustained. Accordingly, the orders dated 17.07.2017 and 16.01.2018 are quashed.

15. This application is allowed.

16. Since the impugned order of dismissal is being set aside on the ground of no evidence, the consequence of



quashing of order shall follow. The petitioner shall accordingly be entitled to all consequential benefits. He will be required to be reinstated forthwith and paid his salary, arrears of salary and other emoluments, as if, no order of dismissal was ever passed against him; if the petitioner files an affidavit before the Disciplinary Authority to the effect that during the said period he was not gainfully employed anywhere else.

17. It will, however, be open for the Disciplinary Authority to invoke Rule 18 (1) of the Bihar CCA Rules for further enquiry by remitting the enquiry to the Enquiring Authority and proceed further, for the reason that the Court has interfered with the impugned order because no evidence was laid by the department during the departmental proceeding.

(Chakradhari Sharan Singh, J)

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