IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21367 of 2019

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Mithilesh Kumar, Son of Sri Jang Bahadur Ram, Resident of Flat No. 201/A, Jagdeo Ashiana Apartment, P.O.-Ashiana Nagar, P.S. Rajeev Nagar, Town and District-Patna (Bihar), Pin Code-800025.

... ... Petitioner

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Government of Bihar, Visheshwariya Bhawan, Bailey Road, Patna.
2. Secretary, Rural Works Department, Government of Bihar, Visheshwariya Bhawan, Bailey Road, Patna (Bihar).
3. Principal Secretary-cum-Additional Commissioner, Departmental Enquiry, Water Resources Department, Government of Bihar, Patna (Bihar).
4. Joint Secretary, Rural Works Department, Government of Bihar, Visheshwariya Bhawan, Bailey Road, Patna (Bihar).
5. Officer on Special Duty, Rural Works Department, Visheshwariya Bhawan, Bailey Road, Patna (Bihar).

... ... Respondents

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Appearance :

For the Petitioners	:	Mr. Y.V. Giri, Senior Advocate Mr. Binod Kumar, Advocate Mr. Raju Giri, Advocate Mr. Santosh Kumar Mishra, Advocate
For the Respondents	:	Mr. Ajey, GA-5 Mr. Ashish Kumar Lal, AC to GA-5

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
C.A.V. JUDGMENT
Date : 29-10-2021

A notification No. 674 dated 28.02.2020 issued by the Rural Works Department, Government of Bihar (Annexure-11 to I.A. No. 3 of 2020) issued vide Memo No. 675 of the same date, whereby punishment of dismissal from service has been imposed on the petitioner is under challenge in the present writ application filed under Article 226 of the Constitution of India. The petitioner has also challenged the correctness of the finding recorded by the

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enquiring authority in respect of the first charge out of the three charges framed against him in the departmental proceeding.

2. I have heard Mr. Y.V. Giri, learned Senior Counsel assisted by Mr. Binod Kumar, Mr. Raju Giri and Mr. Santosh Kumar Mishra, learned counsel appearing on behalf of the petitioner and Mr. Ajey, learned G.A.-5 assisted by Mr. Ashish Kumar Lal, A.C. to GA-5 for the respondent State of Bihar.

3. The petitioner, at the relevant point of time, was posted as an Executive Engineer, Rural Works Department, Works Division, Gopalganj. On the allegation of having acquired assets disproportionate to his known sources of income, a First Information Report was registered on 19.02.2013 for the offences punishable under Section 13(2) of Prevention of Corruption Act, 1988 ('P.C. Act' for short), by the Economic Offence Unit, bearing Economic Offence P.S. Case No. 06/2013. He was put under suspension by a subsequent notification dated 13.03.2013. A departmental proceeding was initiated for imposition of major punishment in accordance with the provisions of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 [For short 'BGS(CCA) Rules'] with the issuance of a charge-sheet vide Memo No. 2148 dated 06.06.2013 containing two charges. Charge No. 1 merely referred to registration of First

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Information Report by the Economic Offence Unit. Charge No.2 mentioned that because of the action taken by the Economic Offence Unit, the image of the Government stood tarnished and that his conduct was contrary to Bihar Government Servant (Conduct) Rules, 2011. A communication dated 26.03.2013 made by the Superintendent of Police, Economic Offence Unit-3, addressed to the Joint Secretary, Rural Works Department, was the only evidence disclosed in the charge-sheet on which the Department intended to sustain the charges against the petitioner. The Departmental Enquiry Commissioner, Bihar, was appointed as the enquiring authority. An officer of the rank of Deputy Secretary in the Department was appointed as the Presenting Officer. This is not in dispute that subsequently, the memo of charge in '*Prapatra-Ka'* was modified and in the modified charge-sheet, three charges were framed against him. Following were the three charges : -

> Charge No.1 : There is a stipulation under letter No. 17521 dated 21.12.2012 issued by the General Administration Department, Government of Bihar, for all officers and employees of the State Government and its undertakings to declare and make public the details of their movable and immovable assets and

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liabilities. Many of disparities have been noticed between the declaration of the property details made by the petitioner for the year 2012-13 and, that found in the report submitted by the Superintendent of Police, Vigilance Investigation Bureau. According to the said report, total possible saving has been found at Rs. 23 lakhs, whereas the investment made by the petitioner has been found to the tune of Rs.1,31,93,322/-. The petitioner, thus, violated the said provision contained in the aforementioned letter dated 21.12.2012. Further, he appeared to be guilty of having acquired assets beyond known sources of income.

Charge No. 2 : A case has been registered against the petitioner for having acquired assets disproportionate to known sources of his income vide Economic Offence Unit Case No. 06 of 2013 dated 19.02.2013 for the offence punishable under Section 13(2) read with 13(1)(e) of the P.C. Act.

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Charge No. 3 : Because of the action taken by the Economic Offence Unit-3, Bihar, and lodging of case under the provisions of the P.C. Act, the image of the State Government has been tarnished and the petitioner's conduct is in breach of the Bihar Government Servants (Conduct) Rules, 2011."

4. Charge No. 2, as originally framed, is verbatim the same as charge No. 3 in the revised charge-sheet. Charge No. 2 of the revised charge-sheet is substantially the same as charge No.1 of the original charge-sheet, which had mentioned registration of a criminal case on the allegation of acquisition of assets disproportionate to the known sources of income. It can be easily discerned on reading of charge No.1 of the revised charge-sheet that the action taken by the Economic Offence Unit leading to registration of First Information Report with the allegation of acquisition of assets disproportionate to known sources of income is the foundation of the said charge.

5. The enquiring authority submitted his report on 31.08.2018. In respect of Charge No.2, the enquiring authority in his report has recorded that since the said charge relates to criminal case, it would not be legally proper to form any opinion. In respect

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of Charge No.3, he recorded that finding in the said regard would depend upon the final outcome of the criminal case. Apparently thus, there is no finding recorded by the enquiring authority in respect of charges No. 2 and 3.

Be that as it may, in the Court's opinion, the said two charges do not constitute by themselves any misconduct inasmuch as they merely refer to factum of registration of First Information Report against the petitioner and its adverse consequence on the image of the State Government of Bihar.

6. As regards charge No.1, the enquiring authority in his conclusion has recorded that the same stood proved. Following is the finding of the enquiring authority in respect of Charge No.1 :-

> "आरोपों के अवलोकन से स्पष्ट होता है कि आरोप संख्या-1 सम्पत्ति विवरणी समर्पित नहीं किये जाने से संबंधित है। इस संबंध में आरोपित पदाधिकारी द्वारा दिये गये स्पष्टीकरण पर ग्रामीण कार्य विभाग का मंतव्य प्राप्त किया गया। ग्रामीण कार्य विभाग द्वारा आरोपित पदाधिकारी द्वारा दिये गये स्पष्टीकरण के अवलोकन से यह स्पष्ट है कि आरोपित पदाधिकारी द्वारा चल अचल सम्पत्तियों के क्रय की अनुमति विभाग से प्राप्त नहीं की गयी है एवं ग्रामीण कार्य विभाग द्वारा उनके स्पष्टीकरण को अस्वीकार्य योग्य बताया है।
>
> चूंकि सम्पत्ति सामान्य प्रशासन विभाग के दिशा-निर्देश के आलोक में दिया जाना है एवं विभाग का यह कहना है कि उनके द्वारा अनुमति नहीं ली गयी है, परन्तु आरोप यह है कि सामान्य प्रशासन विभाग के पत्रांक 17521 दिनांक 21.12.2012 के प्रावधान का उल्लंघन किया गया है।"

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7. A copy of the enquiry report was made available to the petitioner through letter dated 03.12.2018 issued by the Department asking him to submit his second statement of defence (द्वितीय बचाव बयान)/written representation under Rule 18(3) of the BGS(CCA) Rules. The said communication dated 03.12.2018 has been brought on record by way of Annexure-3 to the writ application from which it is evident that the Department recorded its agreement with the finding recorded by the enquiring authority, before issuance of the said communication, whereby the petitioner was asked to submit his representation. A reminder was sent to the petitioner subsequently by letter dated 19.07.2019 for submission of his representation with his comments on the report of the enquiring authority. The petitioner, responding to the second show cause notice, had sought for supply of certain documents through letters dated 28.02.2019 and 02.09.2019 for an effective reply, which, according to him, were not supplied.

8. In the background of the aforesaid facts, the petitioner approached this Court by filing present writ application seeking quashing of the said second show cause notices dated 03.12.2018 and 19.07.2018 on various grounds including the ground that charges were not duly framed and procedures prescribed under Rule 17 of the BGS(CCA) Rules were not duly followed. The

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finding recorded by the enquiring authority in respect of Charge No.1 has also been challenged.

9. During the pendency of the writ application, final order has been passed in the departmental proceeding with the issuance of Notification No. 674 dated 28.02.2020 by the Rural Works Department, Government of Bihar, whereby punishment of dismissal from service has been imposed upon the petitioner. The petitioner has challenged the said order of dismissal by seeking amendment in the main writ application through I.A. No. 3 of 2020, which has been allowed by an order dated 21.05.2021. Apparently thus, the petitioner is challenging the impugned order of dismissal dated 28.02.2020.

10. The pleadings are complete. Counter affidavit/supplementary counter affidavits have been filed on behalf of the State of Bihar. Rejoinder affidavits have also been filed on behalf of the petitioner.

11. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner has submitted that a communication dated 26.03.2013 made by the Superintendent of Police, Economic Offence Unit-3, Bihar, and the aforesaid First Information Report are the only basis on which the departmental proceeding against the petitioner was initiated and charge No.1 has been claimed to

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have been proved by the enquiring authority. He has submitted that no evidence other than these two documents were available in the departmental enquiry to substantiate the charge framed against the petitioner. Fully relying on the said two documents, without properly appreciating the petitioner's written statement of defence, the enquiring authority recorded his finding in respect of charge no.1, which, according to him, is perverse. He has further submitted that the enquiring authority has recorded in his finding in respect of charge No.1 that the petitioner did not seek permission from the department for purchase of movable and immovable property and, therefore, the said charge stood proved. According to him, the enquiring authority has misconstrued charge No.1 inasmuch as he has referred to in his discussions that the said charge related to non-submission of the details of properties, though there was no charge against the petitioner that he had not submitted the details. The allegation against the petitioner in charge No.1 is of disparities between the details of the value of the assets as disclosed by him and, in the report of the Economic Offence Unit. He has submitted that in the absence of any finding recorded by the enquiring authority on the point of aforesaid disparities in disclosure of the assets, Charge No.1 cannot be said to have been proved. He has further submitted that the petitioner

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submitted his reply in response to the second show cause notice explaining as to why the finding recorded by the enquiring authority should not be accepted. The department has, however, merely recorded its agreement with the said finding, without duly adverting to the petitioner's explanation, in its final order. He has urged that the impugned order of dismissal is wholly illegal, in breach of the mandatory provisions of BGS(CCA) Rules and is also in violation of the constitutional mandate under Article 311(2) of the Constitution of India.

12. Mr. Ajey, learned G.A.-5, defending the impugned order has submitted that upon thorough enquiry the Economic Offence Unit found the petitioner to have acquired assets disproportionate to his known sources of income. On due examination of the materials collected by the Economic Offence Unit and other materials, the departmental proceeding was initiated. He has submitted that there is no infirmity in the finding recorded by the enquiring authority, who, on due appreciation of evidence on record including the communication made by the Superintendent of Police, Economic Offence Unit-3, reached a conclusion that Charge No.1 stood proved against the petitioner. He has argued that the enquiring authority has rightly recorded in its report that the conduct of the petitioner was in breach of the

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provisions contained in letter dated 21.12.2012 issued by the General Administration Department, Government of Bihar.

13. I have carefully examined the materials available on record and I have given my anxious consideration to the rival submissions advanced on behalf of the parties.

14. The charges framed against the petitioner have been mentioned hereinabove. It is evident on reading of charge No.1 that there is no allegation against the petitioner that he had not declared his assets and liabilities as required under the General Administration Department letter dated 21.12.2012. The allegation against him, rather, is that he had declared the assets in the year 2012-13, but disparities had been noticed in the declaration made by him in respect of his assets and liabilities vis-a-vis that appearing from the report of the Superintendent of Police, Vigilance Investigation Bureau. The allegation against the petitioner in charge No. 1 is that he acquired assets disproportionate to known sources of income. There is no finding recorded by the enquiring authority to the effect that charge No.1 stood proved inasmuch as the petitioner has been found to have acquired assets beyond the known sources of his income. It is the finding of the enquiring authority, on the other hand, that since he did not declare his assets and liabilities, he violated the

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requirement of the General Administration Department in its letter dated 21.12.2012.

15. In such view of the matter, the finding recorded by the enquiring authority that Charge No.1 against the petitioner stood proved, in my opinion, is unsustaintable. From the finding recorded by the enquiry report in sub-paragraph 3 of paragraph 10 of its report, it is apparent that the enquiring authority has recorded that the petitioner did not seek permission from the Department before purchase of movable and immovable property, though there was no such charge framed against him, as is evident from the memo of charge.

16. In such view of the matter, the finding of the enquiring authority in respect of charge No.1 is not sustainable and in the Court's opinion is perverse. Further, no evidence was adduced except for production of the aforesaid two documents, namely, letter dated 26.03.2013 and the First Information Report in support of the charge against the petitioner. On perusal of the report of the enquiring authority, it appears that as a matter of fact no sincere effort was made by the Department to establish charge against the petitioner of having acquired property disproportionate to his known source of income in the departmental proceeding.

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17. Since the Court is of the view that the finding of the enquiring authority in respect of the charge No.1 itself suffers from legal infirmity, the notification dated 28.02.2020 imposing punishment of dismissal from service based on such findings recorded in the enquiry report is also held to be unsustainable. Further, there is no discussion in the impugned order dated 28.02.2020 on the petitioner's explanation submitted in response to the second show cause notice, stating as to why the finding recorded by the enquiring authority ought not to have been accepted. In the Court's opinion, it was obligatory on the part of the disciplinary authority to have considered the petitioner's explanation/comments on the report of the enquiring authority before reaching a final conclusion on the findings recorded by the enquiring authority. On the contrary, the department recorded its agreement with the finding of the enquiring authority first and then served the same on the petitioner seeking his explanation.

18. It has been repeatedly held by the Supreme Court in catena of decisions that a Government employee facing departmental enquiry has a right to represent before the disciplinary authority, when the disciplinary authority is not the enquiring authority, that the finding recorded by the enquiring authority should not be accepted. A corresponding duty is cast on

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the disciplinary authority to consider the explanation/representation submitted by a Government servant facing departmental proceeding and record reasons why his explanation against the report of the enquiring authority is not acceptable.

19. For the aforesaid reasons, the impugned notification dated 28.02.2020 needs interference. Accordingly, the impugned notification No. 674 dated 28.02.2020 imposing punishment of dismissal from service is hereby set aside. Consequence of setting aside of the impugned order shall follow. Accordingly, the petitioner shall be required to be reinstated forthwith. Since, in the Court's opinion, because of lack of evidence none of the charges framed against the petitioner can be said to have been proved in the departmental proceeding based on which the impugned order has been passed, it is directed that the petitioner shall be entitled to back wages for the period during which he remained out of service by virtue of an illegal order of dismissal. The Court is of the opinion that the entire departmental proceeding has been conducted casually, without making any effort to establish the allegation against the petitioner. In such circumstance, the Court is directing for payment of full wages.

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20. The respondents shall, however, be at liberty to resort to the provision under Rule 18(1) of the BGS(CCA) Rules. It also goes without saying that the respondents shall be at liberty to take appropriate action against the petitioner depending upon the outcome of the criminal case registered against him.

21. Further, the enquiring authority has recorded in his opinion that there was requirement of seeking permission from the department before purchase of movable/immovable property, which the petitioner had not complied. The said finding has been held to be irrelevant in the present judgment as the there was no such charge framed the petitioner. It is made clear that this Court has not recorded any finding on the point as to whether there was such requirement of seeking permission and whether the petitioner had sought for such permission or not. It will be open for the department to examine this aspect of the matter and proceed in accordance with law by framing definite charge in this regard, if so advised.

22. This application is allowed with aforesaid direction and observation.

23. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	06.07.2021
Uploading Date	29.10.2021.
Transmission Date	N/A

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