

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.701 of 2021

=====

Ram Shankar Jha, aged about 61 years, male, Son of Sri Bhola Jha Resident
of Bangrahatta, Police Station- Singhiya, District- Samastipur.

... .. Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna.
3. The Labour Commissioner Labour Resources Department, Government of Bihar, Patna.
4. The Joint Labour Commissioner Labour Resources Department, Government of Bihar, Patna.
5. The District Magistrate, Jehanabad.

... .. Respondents

=====

Appearance :

For the Petitioner : Mr. Satish Chandra Jha 3, Advocate

For the State : Mr. Raghwendra Kumar SC-22.

with Mr. Vipin Kumar Singh AC to SC-22.

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 08-12-2022

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

2. While working as Block Development Officer (*'BDO'*
for brevity) Ratni Faridpur, in the District-*Jehanabad*, the
petitioner was proceeded against for four charges, as contained in
communication dated 25-05-2011, from office of District



Magistrate, *Jehanabad*, enclosed as Annexure-3 to the writ petition. The four charges were as follows:-

“1- वित्तीय वर्ष 2010-11 में वेतनादि मद में उपलब्ध कराये गये आवंटन में से दिनांक 31.03.2011 को 3,38,691.00 रुपये आपके द्वारा प्रत्यार्पित कर दिया गया, जबकि इस राशि में से M.J.C. No. - 2944/2009 राम नगीना सिंह बनाम् राज्य एवं अन्य मामले में राशि भुगतान कर तथ्य विवरणी तैयार करना चाहिए था तथ्य विवरणी तैयार करने के लिए दबाब दिये जाने पर आपने पत्रांक 367 दिनांक 11.04.2011 से पुनः आवंटन की मांग की है। आपके द्वारा समर्पित तथ्य विवरणी देखने से प्रतीत होता है कि आपने अपनी कुटिलमनसा को छुपाने के लिए भुगतान नहीं होने की जिम्मेदारी रक्त पदाधिकारी पर डालकर तथ्य विवरणी तैयार किया है। जबकि आपने माननीय उच्च न्यायालय के आदेश के अनुपालन में लापरवाही बरती है और उपलब्ध राशि प्रत्यार्पित कर दिया।

2- पंचायत निर्वाचन, 2011 में काको प्रखण्ड के लिए आप निर्वाची पदाधिकारी बनाये गये। मतगणना के दौरान आपने पराजित उम्मीदवार ग्राम पंचायत पूर्वी काको को (मुखिया) निर्वाचित का प्रमाण पत्र दे दिया, जो आपके कर्तव्य के प्रति घोर लापरवाही का द्योतक है। इस कृत्य के लिए प्रशासन की बदनामी हुई साथ ही विधि व्यवस्था की समस्या भी उत्पन्न हुई। जिसके लिए आपसे स्पष्टीकरण भी पूछा गया है। जिला निर्वाचन पदाधिकारी (पंचायत) के पत्रांक 1182/गो0 दिनांक 15/05/11 के द्वारा आप निर्वाचन कार्य से हटाये गये। इस सम्बन्ध में राज्य निर्वाचन आयोग को प्रतिवेदन प्रेषित किया गया है।

3- यह भी आरोप है कि आप मुख्यालय (रतनी फरीदपुर) में नहीं रहते हैं। आप जहानाबाद में रहते हैं और सरकारी वाहन से प्रतिदिन रतनी फरीदपुर जाने-आने में गाड़ी और इंधन का दुरुपयोग करते हैं।

4. प्रखण्ड विकास पदाधिकारी, रतनी फरीदपुर के रूप में आज दिनांक 24.05.2011 के 10:30 बजे पूर्वान्ह तक इनके सामान्य रोकड़पंजी दिनांक 18.02.2011 तक ही लिखा पाया गया। उप विकास आयुक्त, जहानाबाद का तिथि एवं समय अंकित करते हुए उक्त तिथि की रोकड़ पंजी पर हस्ताक्षर अंकित है। यह घोर वित्तीय अनियमितता है। इस लापरवाही से गबन की घटना घटित हो सकती है। वित्तीय वर्ष 2010-11



बीते हुए लगभग दो माह हो चुके हैं फिर भी रोकड पंजी को
31. 03.2011 तक संधारित नहीं किया गया है। "

3. The petitioner had surrendered an amount of Rs. 3,38,691/- instead of utilizing the said funds for payment of dues to one *Nagina Ram Singh*, in compliance of certain orders passed by the High Court in his writ proceedings. The second charge was that he hand handed over the certificate of being elected, to one candidate in the *Panchayat* Election of 2011 which was based on a wrong assessment of the votes cast in her favour leading to a wrong declaration of victory in favour of the said person. The third charge was that the petitioner was not residing at his headquarters (*Ratni Faridpur*) he was staying at *Jehanabad* and using the official vehicle for coming to and fro everyday. This was stated to be a misuse of the vehicle and fuel. The fourth charge was that when the office was inspected on 24.05.2011, at 10.30, the general cash book was found to be having entry only up to 18-02-2011. The fact that entries had not been made for more than last two months has been made the basis of allegation that such situation is likely to facilitate misappropriation of funds. The petitioner submitted his response, whereafter, the enquiry was conducted. The charge Nos. 1 and 2 were found to be 'partially proved' whereas the Enquiry Officer recommended ignoring



charge no.3 and rejecting the charge No.4, based on the petitioner's response. In spite of such finding being returned by the Enquiry Officer, the Disciplinary Authority, vide order dated 13.5.2014, dismissed the petitioner from service. The order of dismissal was upheld by the Secretary, Labour Resources Department, Government of Bihar, under order dated 28.08.2014. Both these orders were assailed by the petitioner in CWJC No. 17579 of 2014. The writ petition was allowed. The order of the dismissal and the Appellate order were quashed. The Disciplinary Authority was, however, given liberty to proceed afresh from the stage of submission of Enquiry Report, but in accordance with law. Availing such liberty, the petitioner has been served with a second show cause dated 23.11.2016. The petitioner has responded to the second show cause, copy of which is enclosed as Annexure-17 to the writ petition. Certain clarifications, thereafter, were requisitioned from the petitioner, which has been submitted by the petitioner on 20-04-2017. Considering the petitioner's response to second show cause and clarifications, the Disciplinary Authority has found the petitioner guilty of charge Nos. 1 and 2. With respect to charge nos. 3 and 4, there is no finding in the order of the Disciplinary Authority dated 08-06-2017,, bearing Memo No.



3194. Upon such finding, the Disciplinary Authority has awarded the following punishment:-

“(i) श्री रामशंकर झा को वृहत शास्तियों के नियम-14 के खण्ड-vii के तहत निम्नतर प्रक्रम पर अवनत किया जाता है।

(ii) श्री झा की आगे की सभी प्रकार वार्षिक वेतन वृद्धियाँ एवं प्रोन्नति अवरुद्ध रहेगी।

(iii) श्री झा को उनके निलंबन अवधि (दिनांक 06.02.2014 से दिनांक - तक) में जीवन निर्वाह भत्ता (Subsistence Allowance) के अतिरिक्त कुछ भी देय नहीं होगा, परंतु उनकी निलंबन अवधि सेवा में टूट नहीं मानी जायेगी।

(iv) चूँकि श्री झा बर्खास्तगी अवधि में कार्य पर नहीं रहे हैं. फलतः No Work No Pay का सिद्धांत लागू होगा। ”

4. The petitioner has preferred an appeal against the said order. The Appellate Authority has modified the order of punishment. The modified punishment, as per order of the Appellate Authority, dated 14.9.2017, which reads as follows:-

“(i) श्री झा की दो वार्षिक वेतनवृद्धि पर संचयात्मक प्रभाव से अवरुद्ध की जाती है।

(ii) श्री झा को पूर्व में निम्नतम प्रक्रम पर अवनत करने एवं आगे की सभी प्रकार की वार्षिक वेतन वृद्धि एवं प्रोन्नति अवरुद्ध रहने के दण्ड को निरस्त किया जाता है।

(iii) श्री झा की निलंबन अवधि तथा बर्खास्तगी अवधि में भुगतान के संबंध में पूर्व में दिया गया आदेश यथावत रहेगा। ”

5. Mr. Satish Chandra Jha, learned counsel appearing for the petitioner, submits that the Disciplinary Authority has once again committed the same error, which led to quashing of the earlier order of punishment against the petitioner. While purporting



to issue a second show cause contained a points of distinction, the Disciplinary Authority, in fact, has failed to observe the procedural requirement, as contained in Rule 18(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity 'the CCA Rules, 2005). The Authority has not recorded any finding based on any material adduced in the course of enquiry so as to sustain his difference with finding of the Enquiry Officer. The second show cause issued by by the Disciplinary Authority does not refer to any evidence much less evidence sufficient on record, as per requirement under Rule 18(2) of the CCA Rules, 2005. The second show cause is apparently presumptuous and based on surmises on a general perception that the petitioner cannot be absolved of his responsibilities by virtue of being the head of the office. The petitioner has clearly submitted his response with respect to his first two charges in detail specifying the circumstances in which the funds were returned being insufficient to satisfy the requirement of said Ram Nagina Singh and how the petitioner had sought release of funds for ensuring full payment. These facts have not been denied or disputed. Nothing has been placed in the Enquiry to sustain the charges. There is no examination of any witness or consideration of material whatsoever. As far as the first and second charges are



concerned, the Enquiry Report does not disbelieve the explanation offered by the petitioner in Enquiry. It also does not rely upon any evidence or material to hold these two charges proved. The Enquiry Officer has merely recorded in the Enquiry Report that these two charges are “partially proved”. The feeble notings in this regard is also ambiguous. What part of the charge has been proved and on what basis is not available on record. There is also no basis for differing with this finding by the Disciplinary Authority. There is no compliance with Rule 18(2) of the CCA Rules, 2005 in this regard. The second show cause, therefore, does not satisfy the requirement of Rule 18(2) of the C.C.A. Rules, 2005. The order of the Disciplinary Authority dated 08-06-2017 is also based on presumptions and suspicion. With respect to Charge No.1 regarding non payment of dues to Ram Nagina Singh, the finding recorded by the Disciplinary Authority, reads as follows:-

"आपके पास रु०. 4,94,432/- का आवंटन था तो आपके द्वारा कुटिल मंशा के तहत ही, श्री सिंह के लंबित बड़े राशि रु० 4,86,418/- का भुगतान न कर छोटे राशि रु० 1,55,741/- का भुगतान किया गया जो गलत कारवाई थी । जहां तक भुगतान हेतु आवंटन की अनुपलब्धता की बात थी तो आवंटन प्राप्त करने हेतु आपके स्तर से सार्थक प्रयास नहीं किया गया और अकारण ही उस वित्तीय वर्ष में शेष बची राशि रु० 3,38,691.00- प्रत्यार्पित कर दिया गया। इस प्रकार इस मामले में आपके स्तर से घोर अनियमितता



हुई है और फलतः एक गरीब अनुसेवक की लंबित राशि का भुगतान भी उस वित्तीय वर्ष में नहीं हो सका।

2. पंचायत निर्वाचन, 2011 काको प्रखण्ड के लिए आपको निर्वाचन पदाधिकारी बनाया गया था। पंचायत पूर्वी काको के मतगणना के दौरान मतगणना ट्यूल से प्राप्त परिणाम का सूक्ष्मता से मिलान एवं विश्लेषण नहीं किया गया और आनन-फानन में चुनाव परिणाम घोषित कर दिया गया । "

6. Apparently, the finding is not based on any evidence regarding any misconduct on behalf of the petitioner, and is presumptuous. Insofar as the finding in respect of charge no.2 is concerned, the Disciplinary Authority has recorded ".....इस प्रकार पर्यवेक्षक को कारवाई भी संदेहास्पद हैं। "

7. These findings have been manifestly recorded on mere suspicion. It is settled law that suspicion cannot take the place of truth and in view of the detailed Enquiry which has preceded the order of dismissal the findings were required to be recorded with reference to the same material in the course of Enquiry. This having not been done, the findings of the Disciplinary Authority, as contained in the impugned order dated 08-06-2017, are clearly unsustainable. The same suffers from fatal procedural lapse. The order of the Disciplinary Authority dated 08-06-2017, is therefore, quashed. The Appellate Authority's order



of affirmation of this illegal order, therefore, must also collapse.
The order dated 14.09.2017 is also quashed.

8. The writ petition is allowed. The petitioner would be entitled to all consequential benefits.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24-12-2022
Transmission Date	

