IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10688 of 2020

==

Dr. Anoop Kumar Roy Son of Late Din Dayal Pandey, Resident of Mohalla - Choti Badalpura, Khagaul, Thana Road, Post Office and Police Station-Khagaul, District - Patna - 801105.

... ... Petitioner/s

Versus

1. The State of Bihar through Secretary, Animal Husbandry and Fisheries Department, Government of Bihar, Patna.
2. The Secretary, Animal Husbandry and Fisheries Department, Government of Bihar, Patna.
3. The Additional Secretary, Animal Husbandry and Fisheries Department, Government of Bihar, Patna.
4. The Joint Secretary, Animal Husbandry and Fisheries Department, Government of Bihar, Patna.
5. The Director-cum-Inquiry Officer, Animal Husbandry Directorate, Government of Bihar, Patna.
6. The Deputy Secretary, Animal Husbandry and Fisheries Department, Government of Bihar, Patna.
7. The Under Secretary, Animal Husbandry and Fisheries Department, Government of Bihar, Patna.

... ... Respondent/s

==

Appearance :
For the Petitioner/s : Mr. Gopal Govind Mishra, Adv

For the Respondent/s : Mr. Sajid Salim Khan, SC 25

==

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-09-2022

Heard learned counsel for the petitioner and learned State counsel.

2. While functioning as a Junior Assistant Research Officer at the Animal Health and Production Institute, the petitioner was a member of the purchase committee and has been proceeded against by a Charge-memo dated 12.09.2014 communicated to him by resolution dated 29.04.2015 bearing memo No. 188.

3. The charge-memo on प्रपत्र-(क) alleges that a tender notice was brought out on 03.03.2013 for infrastructure building of the institute in question by purchasing some tools and establishing some plants. A purchase order was issued in contravention of the terms of the notice inviting tender specifically Clause 2.3, Clause 6.3.2 and Clause 6.3.3 of the tender notice.

4. The three clauses read as follows:

"*2.3 Financial part should contain the Financial Bid inclusive of all admissible comprehensive warranty, taxes, duties and levies etc.*

6.3.2 The cost of each machine/equipment should be distinctly quoted in figure and words.

6.3.3 Price should be quoted separately without tax and with all admissible taxes, excise duty, if any and inclusive of comprehensive warranty, etc. in Indian currency only. In case of imported equipments the rates should be quoted in Indian currency only."

5. During pendency of the inquiry proceedings, the petitioner attained the age of superannuation; and in view of his retirement, the proceedings were converted into proceedings under Rule 43(b) of the Bihar Pension Rules.

6. The charges have been held true and the petitioner has been punished by notification dated 27.04.2020, whereby and whereunder 50 percent of his pensionary benefits have permanently been withheld.

7. The learned counsel for the petitioner rightly submits that in the proceedings no evidence, oral or documentary, has been presented by Representing Officer. There is apparent non-compliance with the provisions of Rule 17(14) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

8. It is also submitted that the findings, as communicated in notification dated 27.04.2020, are at variance with the charges levelled against the petitioner in the charge-memo on प्रपत्र-(क). The charges allege violation of certain specific provisions of notice inviting tender whereas the findings, evident from a bare perusal of the order passed by the Disciplinary Authority dated 27.04.2020 is as follows:-

"जाँच पदाधिकारी द्वारा जाँच प्रतिवेदन में मंतव्य दिया गया कि संस्थान में जिन दो उपकरणो को स्थापित किया जाना था

उसके लिए कुल चार निविदा दाता द्वारा निविदा डाला गया। उसमें से J. H. Bio Innovation द्वारा दोनों मशीनों के लिए कुल 1.48 करोड़ न्युनतम दर पर आपूर्ति की अनुशंसा की गई जबकि Metric Eco Solution निविदा दाता द्वारा सिर्फ एक उपकरण के लिए टैक्स सहित 21.37 लाख रूपये न्युनतम दर कोट किया गया जो J.H.Bio Innovation द्वारा कोट किए गए दर से काफी कम था, इसके बावजूद क्रय समिति द्वारा सिर्फ एक उपकरण का निविदा अंकित किए जाने के कारण अस्वीकृति कर दिया गया जो उचित नहीं था।"

9. The findings are at variance with the charges and thus unsustainable to visit a delinquent with any penal consequences as the irresistible conclusion is that the charges contained in the charge memo have not been proved. Petitioner's counsel has also submitted that other members of the Purchase Committee have not been visited with such serious consequences.

10. The learned State counsel, on the other hand, submits that the entire tender process was cancelled and the same has resulted in great financial loss to the State Exchequer.

The petitioner, being a member of the purchase committee, cannot be absolved of his liability.

11. This Court after hearing the parties and going through the records, is in agreement with submissions made on behalf of the petitioner.

12. This Court, therefore considering the procedural infirmity in the inquiry, and also the fact that there is no allegation of any quantified loss, does not find the order of punishment dated 27.04.2020 sustainable in law. The same is accordingly quashed.

13. Writ petition is allowed.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2022
Transmission Date	NA