IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3662 of 2021

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Santlal Chaudhary, Son of Late Ramswaroop Chaudhary, Resident of Village-Rashulpur, P.s.- Mahua, District- Vaishali, (Hazipur)

... ... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna
2. The Chief Secretary, Department of Labour and Employment, Bihar, Patna
3. The Commissioner, Department of Labour and Employment, Bihar, Patna
4. The Special Secretary-cum-Conducting Officer, Department of Labour and Employment, Bihar, Patna
5. The Under Secretary, Department of Labour and Employment, Government of Bihar, Patna
6. The Bihar Public Service Commission through its Chairman
7. The Chairman, Bihar Public Service Commission, Bailey Road, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Brisketu Sharan Pandey, Advocate

For the Respondent/s : Mr.Anil Kumar Singh, GP-26

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 01-12-2022

The petitioner seeks quashing of resolution dated 26.12.2019 in purported exercise of powers under proviso to Rule 43(b) of the Bihar Pension Rules, whereby and whereunder 100% pension of the petitioner has been forfeited by way of punishment.

2. The petitioner was proceeded against on the basis of a complaint that he had demanded a bribe of Rs.10,000/- for dealing with a matter pending before him, while he was posted as Assistant Labour Commissioner, Bettiah. The proceedings was initiated on 21.02.2007. The petitioner took a stand that final order in the file, forming the basis

of allegation, had already been passed on 20.09.2004 even before he had assumed charge as Assistant Labour Commissioner, Bettiah on 24.12.2004. He had denied the allegations.

3. It may be relevant to take note of the fact that on the same allegation, the petitioner was also arrested. The disciplinary authority thereafter decided to keep him under suspension, which was assailed by the petitioner in CWJC No.7679 of 2007.

4. In course of time, enquiry report was submitted on 30.11.2012. The enquiry officer returned a finding that the charges can be proved only in the Vigilance Court where the criminal proceedings is pending and as such, the departmental proceedings cannot be pursued and proved.

5. By resolution contained in Memo No.3192 dated 30.10.2012, as amended by subsequent letter dated 13.02.2013, the disciplinary authority on receipt of the enquiry report ordered a fresh enquiry on the same set of charges. This position was put to challenge by the petitioner in CWJC No.8822 of 2013 on the ground that the Bihar Civil Servants (Classification, Control & Appeal) Rules, 2005 does not provide for such fresh enquiry. The said writ petition was dismissed with liberty to the petitioner to raise the issue of the proceedings being procedurally infirm in the proceedings itself.

6. Against the order dated 07.05.2014 passed in CWJC No.8822 of 2013, the petitioner preferred an appeal. The same was

numbered as LPA No.804 of 2014 and the appeal succeeded partly by order dated 22.08.2014, the relevant extract of which reads as follows :

> "13. In the result and for the reasons discussed above, this appeal partly succeeds. While the order, dated 13.02.2013, passed by Disciplinary Authority directing a *fresh enquiry* and the consequent *enquiry report*, submitted by the second Enquiry Officer, are hereby set aside and quashed, the matter is remitted back to Disciplinary Authority with liberty to resume the first enquiry, which had been initiated by the order, dated 21.02.2007,aforementioned by appointing afresh, if necessary, Enquiry Officer and Presenting Officer and if the enquiry is resumed, the writ petitioner-appellant shall be informed accordingly.
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> 15. We further direct and clarify that if Disciplinary Authority decides to resume the enquiry, appoint Enquiry Authority and/or Presenting Officer, as the case may be, and inform the writ petitioner-appellant accordingly and, thus, having given notice, as regards resumption of the first enquiry, to the writ petitioner-appellant, ensure that unless the writ petitioner-appellant does not co-operate in getting the *further enquiry* so resumed, expeditiously, the *further enquiry* is concluded,in accordance with law, within a period of six months from the date of receipt of the notice of the resumption of such *further enquiry* by the writ petitioner-appellant."

7. The authorities in purported compliance of the order passed by the Division Bench have again concluded the proceedings,

which has culminated in issuance of the impugned order dated 26.12.2019.

8. The State Counsel has submitted that the order dated 26.12.2019 is an exhaustive order. Due to unavoidable reasons, the enquiry has protracted for quite some time, but the final order is after following the due procedure. The misconduct, which is subject to the enquiry, is an act of corruption which deserves no leniency. This Court, therefore should not invoke its writ jurisdiction in favour of the petitioner.

9. The order dated 26.12.2019 is a detailed order running into 13 pages recording the entire background right from the date of issuance of charge memo, as far back as on 21.02.2007, till passing of the impugned order of punishment, nearly 13 years later i.e., on 26.12.2019.

10. It is evident from the impugned order that the complainant Ranjeet Kumar had refused to be cross-examined. The disciplinary authority has noted that on 19.04.2018 he was scolded by the petitioner. On the dates after 19.04.1918, the complainant for some reason or the other refused to appear for his cross-examination.

11. In so far as the Superintendent of Police, Vigilance Investigation Bureau Dr.Parwez Akhtar is concerned, the disciplinary authority has accepted the fact that he was not a witness to the demand or acceptance of illegal gratification. The said Dr.Parwez Akhtar was also a trap leader. In so far as the two independent witnesses are

concerned, the disciplinary authority has recorded that they have stated in the enquiry that the trap did not take place in their presence. They have denied the veracity of the pre-trap and post-trap memorandum.

12. As regards Dy. S.P., Vigilance Sri Praksh Nath Mishra, disciplinary authority has recorded in his order that he was not cross-examined. The Inspector, Vigilance, namely, Sri Vinay Kumar Singh has also not supported the allegation against the petitioner.

13. Under the circumstances, the order of the disciplinary authority dated 26.12.2019 holding the charges to be proved, is without reference to any material whatsoever and based on surmises. The order is apparently perverse in its conclusion regarding charges being proved, having regard to the above noted facts. The perversity of the conclusion and absence of any material whatsoever is apparent from reading of the order. Relevant extract of the order, which manifests such perversity and lack of material, is being reproduced :

> "डॉ परवेज अख्तर, तत्कालीन आरक्षी उपाधीक्षक, निगरानी अन्वेषण ब्यूरो. पटना ने इस विभागीय कार्यवाही के दौरान दिनांक 27.03.2016 को यह बयान दिया है कि दिनांक 13.10.2006 को परिवादी श्री रंजीत कुमार निगरानी के सभी सदस्यों के साथ मुजफ्फरपुर से 4.00 बजे प्रातः प्रस्थान कर लगभग 8:00 बजे प्रातः बेतिया पहुँचे तथा बेतिया में संतलाल चौधरी के आवास के इर्द-गिर्द हमलोग अपधाने रूप में फैल गये। परिवादी एवं सत्यापनकर्ता को संतलाल चौधरी के आवास पर भेजा गया। करीब 9:30 बजे प्रातः परिवादी के द्वारा पूर्व निर्धारित संकेत दिया गया जिसे देखकर हम सभी सदस्य श्री संतलाल चौधरी के आवास पर पहुँचे। डॉ परवेज अख्तर के बयान से यह स्पष्ट होता है कि रिश्वत की राशि देने के लिए परिवादी श्री रंजीत

कुमार के साथ सत्यापनकर्ता आनंद किशोर वन गये थे। अतएव डॉ अख्तर द्वारा Demand और Acceptence को न देखा जाना कोई अस्वभाविक घटना प्रतीत नहीं होती है एवं इससे आरोप खंडित नहीं होता है जहाँ तक MW वाद संख्या-44/04 से संबंधित रिकॉर्ड की जाँच करने प्रश्न है. ट्रैप लिडर के नाते डॉ परवेज अख्तर का दायित्व ट्रैप की कार्रवाई करना था, न कि MW वाद संख्या- 44704 से संबंधित रिकॉर्ड की जांच करना। विभागीय कार्यवाही के दौरान यद्यपि कि दोनों स्वतंत्र गवाहों ने अपने परीक्षण / प्रेतिपरीक्षण में यह कहा है कि ट्रैप उनके सामने नहीं हुआ तथा प्री-ट्रैप तथा पोस्ट-ट्रैप मेमोरेंडम में लिखी गयी सारी बाते गलत है। जब वे संतलाल चौधरी को देखने के लिये निगरानी कार्यालय मुजफ्फरपुर गये तो देखा कि निगरानी के पुलिस कुछ टाईप कर रहे थे। परन्तु इन दोनों स्वतंत्र गवाहों के बयान में विरोधाभाष है। यह दोनों स्वतंत्र गवाह बेतिया के रहने वाले हैं। आखिर ये श्री संतलाल चौधरी को देखने के लिये निगरानी कार्यालय मुजफ्फरपुर क्यों गये? श्री चौधरी भी इसका स्पष्ट उत्तर नहीं दे रहे है। श्री विनय कुमार सिंह पुलिस निरीक्षक, निगरानी के द्वारा दिनांक-14.09.2018 को प्रतिपरीक्षण में दिये गये बयान से आरोप खंडित नहीं होता क्योंकि. श्री सिंह ने आरोपित पदाधिकारी के विरुद्ध आरोप से इंकार नहीं किया। साथ ही (श्री प्रकाश नाथ मिश्र, पुलिस उपाधिक्क निगरानी द्वारा भी यह बयान दिया है गया है कि (श्री मिश्र का प्रतिपरीक्षण नहीं हुआ) इस घटना में अनुसंधान करते हुए पर्याप्त साध्य घटना के प्रतिवेदित धाराओं के अभियुक्त श्री चौधरी के विरुद्ध आरोप पत्र दायर किया गया तथा यह मामला माननीय उच्च न्यायालय निगरानी पटना में विचाराधीन है। इस प्रकार श्री संतलाल चौधरी, तत्कालीन सहायक श्रमायुक्त बेतिया सम्प्रति सेवानिवृत्त, द्वारा दिये गये द्वितीय कारण पृथ्छा के सम्यक समीक्षोपरात उनके विरूद्ध आरोप प्रमाणित पाये गये। फलस्वरूप बिहार पेंशन नियमावली, 1950 के नियम 43 के अंतर्गत उनके पेंशन की राशि से 100% (शत प्रतिशत) कटोती का दण्ड अधिरोपित करने का औपबंधिक निर्णय सक्षम प्राधिकार द्वारा लिया गया।"

14. Having regard to the limits of judicial review stated in decision of the Apex Court in the case of ***Union of India & Ors. vs. P. Gunasekaran,*** reported in ***(2015) 2 SCC 610***, this Court finding the conclusion of the disciplinary authority, on the face of it, to be wholly arbitrary and capricious that no reasonable person can arrive at such conclusion as also the fact that he has relied upon inadmissible evidence or no evidence, is inclined to exercise writ jurisdiction in favour of the petitioner for quashing the illegal order dated 26.12.2019. The order dated 26.12.2019 is hereby quashed.

15. The writ petition is allowed with all consequential benefits.

(Madhuresh Prasad, J)

PNM

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