

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1680 of 2018
In
Civil Writ Jurisdiction Case No.7006 of 2014

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1. The Chairman Cum The Appellate Authority Bihar Public Service Commission, Bihar, Patna.
 2. The Bihar Public Service Commission, Patna through its Secretary
 3. The Members of the Bihar Public Service Commission, Patna.
 4. The Secretary-Cum-the Disciplinary Authority, Bihar Public Service Commission, Bihar, Patna.
 5. The Joint Secretary-Cum-Inquiring Officer, Bihar Public Service Commission, Bihar, Patna.
 6. The Officer-on-Special Duty, Bihar Public Service Commission, Bihar, Patna. Appellant/s

Versus

1. Meena Pratap Wife of Late Bhanu Pratap Resident of Mohalla-Flat No. A-4-B, Alakhraj Apartment, East Boring Canal Road, Police Station-Budha Colony, District Patna.
2. Apurva Daughter of Late Bhanu Pratap Resident of Mohalla-Flat No. A-4-B, Alakhraj Apartment, East Boring Canal Road, Police Station-Budha Colony, District Patna.
3. The State of Bihar through Principal Secretary, General Administration Department. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Satyabir Bharti, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, Advocate
For the Pvt. Respondent/s	:	Mr. Sanjeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 13-07-2022

Instant appeal has been filed by the Bihar Public Service Commission (for short “BPSC”). The appellants have questioned the validity of the order of the learned Single Judge dated 29.06.2018 passed in CWJC No. 7006 of 2014. Deceased-Bhanu



Pratap who was working as an Analyst Programmer with the appellants was subjected to parallel proceedings and in the disciplinary proceedings it was concluded in imposition of penalty of dismissal from service on 18.03.2013. In criminal proceedings it is stated to have abated on account of death of the deceased-employee on 23.10.2017. Thus, the legal heir of the deceased-employee Bhanu Pratap have come on record in the writ petition.

Deceased-employee was charge-sheeted on 03.05.2012 on 10 charges. He is stated to have submitted his explanation. Disciplinary authority was not satisfied with the explanation and proceeded to appoint an inquiring and presenting officer. The inquiring officer submitted his report on 30.08.2012 while holding charge no. 1, 2 and 9 were proved, the remaining charges were not proved. On receipt of inquiring officer's report the disciplinary authority issued a second show cause notice on 21.09.2012 for which the deceased-employee is stated to have submitted his explanation on 25.10.2012. Based on these material information the disciplinary authority proceeded to impose the penalty of dismissal from service on 18.03.2013. Deceased employee feeling aggrieved by the order of penalty of dismissal preferred appeal and it was rejected on 14.11.2013. Hence, the deceased-employee preferred CWJC No. 7006 of 2014.



On 29.06.2018, learned Single Judge allowed the CWJC No. 7006 of 2014, thus, the present appeal by the BPSC.

Learned counsel for the BPSC vehemently contended that the learned Single Judge has committed error in holding that the charges leveled against the deceased-employee are vague and inadequate. It is further submitted that explanation/reply to the charge memo was examined by the inquiring officer instead of disciplinary authority. Further, the vigilance report is not in terms of the relevant provisions. The aforesaid reasoning by the learned Single Judge is incorrect having regard to the material on facts. It is submitted that even though charge is vague at the same time statement of imputation provides all ingredients in respect of charge. It is further submitted that on receipt of deceased-employee's explanation to the charge memo there is no mandatory provision that the disciplinary authority is required to examine the explanation and pass any order. If the disciplinary authority feels that it is a case of inquiry, he can order for inquiry, thus, inquiry has been ordered. In respect of vigilance report is concerned, there is no infirmity and it is by competent authority.

In the light of these facts and circumstances, order of the learned Single Judge dated 29.06.2018 passed in CWJC No. 7006 of 2014 is liable to be set aside.



Per contra, learned counsel for the respondent resisted to the aforesaid contentions of the BPSC standing counsel and submitted that there is no infirmity in the order of the learned Single Judge. It is further submitted that relevant documents have not been cited in the list of document namely 07.12.2000 communication in respect of functioning of the Analyst Programmer with reference to competitive examination like how to handle the examination material information. In absence of citing 07.12.2000 documents in the list of documents along with the charge memo it amounts to relying on extraneous material information. Even though deceased-employee was aware of the powers and functions assigned to him at the same time when the charge is that the deceased-employee had acted contrary to 07.12.2000 to the extent that materials have been given to his subordinate employee Satyandra Kumar Choudhary as a custodian of the records. In order to prove that deceased-employee was assigned certain functions the relevant document is 07.12.2000 and it was not part and partial of the inquiry proceedings. It is further submitted that relevant witnesses have not been examined in support of proved charge no. 1, 2 and 9. Therefore, there is no infirmity in the order of the learned Single Judge.

Heard learned counsels for the respective parties.



Undisputed facts are that the deceased-employee who was working as an Analyst Programmer with the BPSC was subjected to disciplinary proceedings in framing of charges and charges were ten in number. On 03.05.2014 and it was concluded in imposition of penalty of dismissal from services on 18.03.2017. Further, the deceased-employee suffered order before the appellate authority on 14.11.2013.

No doubt, the learned Single Judge has committed an error while assigning the reasons that the charge is vague and inadequate. Non-examination of deceased-employee explanation/reply to the charge memo by the disciplinary authority and vigilance report is not in accordance with the relevant provision. However, it is to be taken note of that charge no. 1 is proved. In respect of proving the charge no. 1, relevant document has been cited like what are the powers and functions assigned to the deceased-employee-Analyst Programmer so as to contend that he has violated instructions given to him by his superiors. Even though such instructions were given by communication dated 07.12.2000 at the same time it was not cited as one of the document along with the charge memo. In other words, extraneous material has been taken into consideration for the purpose of proving charge no. 1 and it is not permissible. In fact, disciplinary



authority could have issued amended charge memo while incorporating additional document namely communication dated 07.12.2000. Further, the author of 07.12.2000 document as a witness is not cited. In the absence of citing the communication dated 07.12.2000 and examination and cross-examination of the author of the communication dated 07.12.2000 proving the charge is beyond the scope of subject inquiry.

Charge no. 2 is based on the NIC report. Author of NIC report was examined at the same time it was noticed that NIC report is based on the investigating officer's report. Investigating officer has not been cited as witness so as to examine and cross-examine. The entire NIC report is based on the investigating officer's report. The very author of the investigating officer report has not been cited as witness and cross-examined. Therefore, to the above extent, charge no. 2 can not be examined and held to be proved. Charge no. 9 is concerned, it is to be noted that with reference to the investigating officer's report as noticed earlier the investigating officer has not been cited as one of the witnesses in support of charge no. 9 and he was not examined and cross-examined.

Hon'ble Apex Court in the case of **S.C. Girotra vs. United Commercial Bank (UCO BANK)** reported in 1995



Supp. (3) SCC 212 and Anant R. Kulkarni Vs. Y.P Education Society & Ors. reported in **(2013) 6 SCC 515** held that if in an inquiry any document is relied in such an event the author of the document is required to be examined. That apart, non-citing of relevant documents and non citing of relevant witnesses in order to prove charge no. 1, 2 and 9 the appellants have not made out a case even though reasoning assigned by the learned Single Judge may not be correct at the same time in view of the aforesaid lacunae the appellants have not made out a case so as to interfere with the order of the dismissal dated 18.03.2018 and appellate authority order dated 14.11.2013. Reasoning assigned by the learned Single Judge would not come in the way of the present order. Accordingly, the Letters Patent Appeal 1680 of 2018 stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

shanu/-

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CAV DATE	N/A
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