

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.651 of 2019

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Veena Kumari, Wife of Sri Arjun Kumar Azad, Resident of Village- Tetaria,
P.S.- Barachatti, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Joint Secretary to the Government, Social Welfare Department,
Government of Bihar, Patna.
3. The Deputy Secretary to the Government, Social Welfare Department,
Government of Bihar, Patna.
4. The Director, Integrated Child Development Scheme I.C.D.S., Government
of Bihar, Patna.
5. The District Magistrate, West Champaran, Bettiah.
6. The District Program Office, West Champaran, Bettiah.
7. The Sub Divisional Officer, Bagaha, District- West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Binod Kumar Sinha, Advocate Mr.Nikhilesh Kumar, Advocate
For the Respondent/s	:	Mr.Gyan Prakash Ojha -GA7 Ms. Sanghmitra Ghosh, AC to GA-7 Mr. Abhishek Singh, AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 07-10-2023

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

2. The present writ petition has been filed for
setting aside the order of punishment, awarded to the petitioner
as contained in Notification Memo No. 5407 dated 30.12.2011
issued by the Joint Secretary to the Government, Social Welfare
Department, Government of Bihar, Patna (Annexure11/page-81)



and also the order contained in Memo No. 2474 dated 28.05.2013 issued by the Special Secretary, Social Welfare Department, Government of Bihar by which the Review Petition of the petitioner filed for review of the order of punishment and to pay her all arrears payable to her has been rejected.

3. Learned counsel for the petitioner submits that the petitioner was appointed as Lady Project Supervisor and, subsequently, she was promoted to the post of Child Development Project Officer on 14.01.2009 and was posted at Bagaha, West Champaran where she joined. The petitioner retired from service on 31.03.2023. He further submits that the petitioner was given additional charge of Child Development Project Officer, Sidhao. The petitioner was holding her office two days a week at Sidhao where she found that there was no work culture in the office of the Child Development Project Officer, Sidhao and there was only one staff Niranjana Kumar Sinha, Clerk-cum-Typist who was managing the entire work at his wish. One lady Supervisor was also posted there who was concerned with her supervisory duty only.

4. Learned counsel for the petitioner further submits that the petitioner has received several complaints orally from the Sevika/Sahayika of different Anganbari centers



and communicated the same to the Deputy Secretary, Social Welfare Department as well as the District Magistrate, Bagaha vide letter no. 156 dated 26.05.2010 and letter no. 4 dated 12.06.2010 (Ann. 2 series/P 34 & 38) respectively about the non-cooperation, misbehavior, arbitrariness, and harassing the Sevika/Sahayika by the said clerk-cum-typist. On the said complaint, the District Magistrate vide his letter No. 834 dated 10.05.2010 directed the Director, N.E.P., Bettiah to hold an inquiry and submit a report whereupon a report was submitted holding the allegation levelled against the said Clerk-cum-typist to be correct. Besides that the Enquiry Officer has also opined that those wrongs done by the said Clerk are not possible without the knowledge of the petitioner and, therefore, both are equally liable.

5. Learned counsel for the petitioner further submits that on the basis of the observation made in the inquiry report, a departmental proceeding was initiated against the petitioner and, therefore, the District Magistrate, West Champaran, Bettiah vide his letter no.213 dated 21.07.2010 (Annexure -4 to the writ petition) forwarded a memo of charge in Form-K, with recommendation to the Principal Secretary, Social Welfare Department to allow to take legal action against



the petitioner as well as the said Clerk. Thereafter, vide Memo No. 3275 dated 23.07.2010, issued under the signature of the Deputy Secretary, Social Welfare Department (Annexure-5), the petitioner was put under suspension. Besides that, on the direction of the District Magistrate, Bettiah, vide Letter No. 1542 dated 22.08.2010, the S.D.O., Bagaha got an FIR lodged against the petitioner and the said Clerk being Bagaha P.S. Case No. 371 of 2010. The said criminal case filed against the petitioner resulted in her discharge by the order passed by this Court in Criminal Miscellaneous No. 52130 of 2014 on 29.07.2015 (as contained in Annexure -6 to the writ petition).

6. Learned counsel further submits that so far as the departmental preceding is concerned, a charge memo has been issued in the Form-K vide Resolution contained in Letter No.3435 dated 05.08.2010 under the signature of Deputy Secretary to Government, Social Welfare Department (Annexure-7) directing the petitioner to submit her written defense. In pursuant to the said show cause, the petitioner filed her written defense on 01.09.2010 before the Enquiry Officer denied all the charges and explained in detail her defense enclosing necessary documents. Learned counsel for the petitioner further submits that the Enquiry Officer after going



through the documents and the materials available on record, came to the conclusion that none of the charges have been proved against the petitioner and submitted his inquiry report vide letter no.80 dated 28.04.2011 (annexure-9 to the writ petition). He further submits that in the inquiry report, the Enquiry Officer has categorically discussed in each and every charge memo that the evidence was not produced before the Enquiry Officer and this is the basic reason due to which the Enquiry Officer held that the charge was not proved. He further submits that the disciplinary authority completely disagrees with the inquiry report issued second show cause notice vide Letter No. 4162 dated 25.10.2011 to the petitioner (Annexure -10 to the writ petition).

7. Learned counsel for the petitioner further submits that from the disagreement memo, which is annexure -10, it is crystal clear that the said disagreement memo has been prepared in gross violation of Rule 18(2) of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005 as the disagreement of memo must contain the reasons for such disagreement and record its own finding on such charge, if the evidence on record is sufficient for the purpose. He further submits that the enquiry officer has categorically stated in its



finding that the evidence has not been taken before him, even then the disciplinary authority reached the conclusion on the basis of evidence that was taken before the Director, N.E.P. Bettiah, and this evidence was taken at the time when the charge was not even framed even the charged memo has not been prepared. Therefore, counsel for the petitioner submits that the disagreement memo suffers from a violation of Rule 18(2) of the Rule of 2005.

8. He further submits that in compliance with the disagreement memo and demand of second show cause notice, the petitioner submitted his reply to the second show cause on 14.11.2011 to the Disciplinary Authority and the disciplinary authority, ignoring the points mentioned in the second show cause, imposed three punishments, i.e. (i) fixation of pay at the minimum pay scale reverting to basic pay; (ii) stoppage of increment for one year and; (iii) Nothing will be paid for the period of suspension except subsistence allowance.

9. Learned counsel for the petitioner further submits that the said order of punishment is based on the inquiry report of the Director, N.E.P., Bettiah dated 14.06.2010 and the statement of the Aanganbari Sevika/Sahayika made by the said Director, N.E.P. and those Anganbari Sevika/Sahayika are



required to be produced before the enquiry officer for their examination and cross-examination about the validity of the said report dated 14.06.2010, but it has not been done in violation of Rule 13 of the Rule of 2005 and, thus, the order of punishment is quite illegal based on presumption and surmises.

10. Learned counsel for the petitioner further submits that the petitioner has filed a review petition raising all the points but his review petition was rejected in which none of the points raised in the memo of review was looked into. Learned counsel for the petitioner conclusively, submits that the second show cause disagreement memo, the punishment order, and the order rejecting the review petition are all in gross violation of Rules 17(3), 17(4), and Rule 18 (2) of the Rules of 2005.

11. To substantiate his argument, counsel for the petitioner relied on the judgment rendered in the case of ***Roop Singh Negi Vs. Punjab National Bank and Ors.*** reported in (2009) 2 SCC 570; in the case of ***Choudhary Murli Manohar Prasad Roy vs. the State of Bihar and Ors.*** reported in (2008) 4 PLJR 315; ***Dinesh Kumar vs. the State of Bihar and Ors.*** reported in (2015) 1 PLJR 108 and in the case of ***State of Uttar Pradesh and Ors. Vs. Saroj Kumar Sharma*** reported



in **(2010) 2 SCC 772** and submits that in the departmental proceeding, every memo of charge has necessary to be proved, but it is true that the standard of proof in the departmental proceeding is by virtue of preponderance of evidence but non-production of any evidence or non-proving of any of the allegations either by virtue of evidence (examination and cross-examination) or by virtue of document (mark it exhibit by the person competent). A mere allegation shall not be anything and, therefore, the second show cause the order passed by the disciplinary authority and the review authority all are liable to be set aside.

12. Learned counsel for the State vehemently opposes the prayer of the petitioner and submits that the petitioner was a gazetted employee at the time of initiation of departmental proceedings against her and there is no illegality in issuance of charge memo against her. The charge memo has been issued completely in accordance with Rule 17(3) of the Rule of 2005 and the Enquiry Officer has also been appointed. The said charge is based on the evidence of the Anganbari Sevika/Sahayika and the inquiry report submitted by the Director, N.E.P., Bettiah. This evidence is the sole material against the petitioner and on the basis of this the disciplinary



authority has issued a second show cause notice to the petitioner finally being dissatisfied with the reply of the second show cause filed by the petitioner, the disciplinary authority has passed the punishment order in which reasons are well explained. The punishments are not exorbitant and have been passed completely as per the petitioner's role in the commission of the charges alleged in the memo. Learned counsel for the State further submits that in the review petition, the consideration of the points raised by the petitioner has been made in the order and, therefore, the entire proceeding is fit to be sustained.

13. But upon specific query of the Court, that whether the report of the Director N.E.P., Bettiah and the evidence of Aanganbari taken by the Director, N.E.P, Bettiah which are the basis of this charge memo, second show cause and punishment have been proved before the enquiry officer or not. Counsel for the State fairly submits that from the materials available on record, it transpires that those are based on report of the Director, N.E.P. but the evidence of Aanganbari (examination and cross-examination) did not take place before the Enquiry Officer.

14. In the light of the submissions made above



by the parties and upon going through the material available on record, it is necessary to quote the relevant Rules 17(3), 17(13) 17 (14) or 18(2) of the Rule of 2005 as under :

“17(3). Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

17(13). On receipt of the requisition specified in sub-rule (12) of this Rule, every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority, having the custody or possession of the requisitioned documents, is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents will be against public interest or security of the State, he shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents.

17(14). On the date fixed for the inquiry, the



oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.

18 (2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23)(ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

15. In the case of **Roop Singh Negi** (supra), the Hon'ble Supreme Court has categorically held in paragraph 14 as under:-

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said



documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. It transpires to this Court that the basic document i.e report of Director, N.E.P., Bagaha has not been proved before the Enquiry Officer. Similarly, the evidence of Anganbari workers on the basis of which this report was prepared by Director, N.E.P. Bettiah was also not produced before the Enquiry Officer. Hence, this Court is of the opinion that the finding of the Enquiry Officer is absolutely in accordance with the law, and in the disagreement memo there is a gross violation of Section 18(2) of the Rule of 2005 as in the department proceeding this aspect has completely been ignored and the review order is also a non-speaking order.

16. In this view of the matter, Notification Memo No. 5407 dated 30.12.2011 issued by the Joint Secretary to the Government, Social Welfare Department, Government of Bihar, Patna (Annexure11/page-81) and also the order contained in Memo No. 2474 dated 28.05.2013 issued by the Special Secretary, Social Welfare Department, Government of Bihar are hereby quashed.



17. Learned counsel for the petitioner further submits that during the pendency of the writ petition, the petitioner retired from service on 31.03.2013.

18.As such, the petitioner shall be entitled to get all the benefits relating to her services in accordance with the law within six months from the date of receipt /production of a copy of this order.

19. With the aforesaid observation and direction, the writ petition stands disposed of.

20. Interlocutory application, if any, stands disposed of.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	13/10/2023
Transmission Date	NA

