

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.415 of 2023

In
Civil Writ Jurisdiction Case No.10109 of 2021

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1. The State of Bihar through Additional Chief Secretary-cum- Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
 2. The Additional Secretary to the Govt., Water Resource Department, Govt. of Bihar, Patna.
 3. The Additional Departmental Enquiry Commissioner, Sinchai Bhawan, Patna.

... .. Appellant/s

Versus

Bharat Purbey Son of Late Jaibeer Purbey, Retired Executive Engineer, Water Resources Department. At present resident of 3SFA-1/37, Bahadurpur Housing Colony, Bhootnath Road, Police Station- Agamkuan, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vivek Prasad G.P.-7

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 06-12-2023

Heard the parties.

2. The present appeal has been preferred against the order and judgment dated 21.12.2022 passed in CWJC No. 10109 of 2021 by the learned Single Judge whereby and whereunder the Writ Court allowed the writ application and set aside the impugned punishment order of withholding of full pension under Rule 43 (b) of the Bihar Pension Rules (henceforth for short 'the Pension Rules') as also the order no. 1919 dated 03.09.2019 and the revisional order vide



Notification No. 179 dated 06.02.2020.

3. The matrix of facts giving rise to the present appeal is/are as follows:-

4. The respondent-petitioner was appointed as an Assistant Engineer in the Water Resources Department, Bihar Patna (henceforth for short 'the Department') on 31.01.1979 and he retired on 31.03.2015 while serving as Executive Engineer.

5. During his service tenure, a criminal case vide Economic Offence Unit Case No. 36 of 2013 was registered under different sections of the Prevention of Corruption Act, 1988 (henceforth for short 'the P.C. Act') as the properties, he was holding were found to be disproportionate to his known source of income.

6. An information to this effect was given by the Economic Offence Unit, Bihar, Patna vide letter no. 232 dated 02.09.2013 to 'the Department' whereafter he was put under suspension vide memo no. 138 dated 27.01.2014 in contemplation of the departmental proceedings.

7. Subsequently, vide memo no. 281 dated 07.03.2014, the departmental proceedings were initiated against him under Rule 17 of the Bihar Government Servant



(Classification, Control and Appeal) Rules, 2005 (henceforth for short 'the 2005 Rules'). This followed the appointment of Departmental Enquiry Commissioner, Bihar as the Enquiry Officer and the memo of charge was/were served upon the respondent-petitioner.

8. The petitioner faced departmental proceedings whereafter the Enquiry Officer held him guilty after due examination of charges adduced by the Presenting Officer and was awarded the maximum punishment of stoppage of 100 percent pension permanently vide notification contained in 1919 dated 03.09.2019.

9. Aggrieved, the respondent-petitioner preferred revision petition which came to be rejected on 06.02.2020. Still aggrieved, the writ petition vide C.W.J.C. No. 10109 of 2021 was filed.

10. The contention before the writ court by the respondent-petitioner was that the entire memo of charges were based on the FIR lodged by the Economic Offense Unit. Further, no list of witnesses nor evidence on which the charges were based were brought on record during the departmental proceedings.

11. The respondent-petitioner made request for



supply of the evidence but save and except the charge sheet, no further document was/were provided. Even his demand for providing the list of witnesses was turned down vide letter no. 307 dated 01.03.2017 incorporating therein that there is no requirement of witnesses.

12. As such, it was his submission before the writ Court that since no witnesses were examined in the departmental proceedings nor the relevant documents provided nor the same was examined by the Enquiry Officer, certainly, the mandatory procedure of Rule 17 of 'the 2005 Rules' were not followed.

13. It was the submission on behalf of the respondent-petitioner that when he was not provided the list of witnesses, no witness examined by the Presenting Officer nor cross-examined by him, there was complete disregard of the mandatory provision of 'the 2005 Rules' and thus the judgment delivered by the Hon'ble Apex Court in the case of **Roop Singh Negi Vs. Punjab National Bank & Ors.** reported in **2009 (2) SCC 570** comes into picture. It was the submission on behalf of the respondent-petitioner that the order as such has to go.

14. The State opposed the prayer of the respondent petitioner stating that since the charges were framed against the



respondent-petitioner relating to disproportionate asset; the departmental proceeding was initiated in which he was put on show cause/second show cause and only thereafter, the order was passed which need no interference.

15. The writ Court took up the matter on 21.12.2022 and having gone through the entire facts came to the conclusion that the departmental proceeding was not in conformity with the Rule 17(14) of the Bihar CCA Rules 2005. It accordingly allowed the prayer of the respondent-petitioner. The relevant portion of the order read as follows:-

“From the materials available on record and the settled legal position, one thing which is evident is that tendering of documents by department cannot be said to be adequate to establish a charge in a departmental proceeding, unless the contents thereof are also proved. Admittedly, neither the contents of the FIR nor the charge-sheet has been proved. Further, non-examination of the complainant is a serious lacunae, which not only causes prejudice to the delinquent, but also nullifies the entire departmental proceeding.

From the materials available on record, it also appear that the departmental proceeding is not in conformity with the Rule



17 (14) of the Bihar CCA Rules, 2005, apart from non- observance of rules 4 and 6 thereof.

In view of the aforesaid settled legal position and the infirmities crept in the departmental proceeding, the impugned order as contained in Notification No.1919 dated 03.09.2019 and the order passed in revision as contained in Notification No. 179 dated 06.02.2020, are hereby set aside. Though this Court intended to remit the matter back to the department for de novo departmental proceedings, however, considering the fact that the petitioner has already superannuated, it would be a futile exercise, hence having been set aside the impugned orders, the petitioner must be granted all the retiral benefits in accordance with law.

Accordingly, the present writ petition stands allowed”.

16. Now it was the turn of the State of Bihar to prefer the present appeal.

17. Mr. Vivek Prasad, learned counsel appearing on behalf of the appellant-State of Bihar submitted that the departmental proceeding was conducted as per ‘the Rule 17 of ‘the 2005 Rules’. It is his further submission that an Enquiry



Officer was appointed to conduct the enquiry against the respondent-petitioner, copy of the resolution was communicated to him which included the memo of charges and evidence based on the details of moveable and immovable properties and he was found *prima facie* guilty of acquiring assets disproportionate to his income. Further, as he superannuated on 31.03.2015, the proceeding was converted to Rule 43(b) of the Bihar Pension Rules and he having participated in the departmental enquiry, submitted his written defence and only thereafter the order in question was passed. As such there was not error in the order.

18. He thus submits that the writ Court erred in passing the order and setting aside the orders passed in the departmental proceedings.

19. It is his submission that while passing the order, the writ Court could have remitted the matter back to the disciplinary authority for fresh departmental proceedings. Instead, it went on to direct payment of retiral dues in accordance with law.

20. We have gone through the facts of the case, materials on record as also the submissions put forward by the learned State counsel. The Writ Court took into account the fact



that the documents that the department provided to the respondent-petitioner was/were not adequate to establish a charge in the departmental proceedings. The contents of the FIR or the charge sheet were not proved and further the complainant was not examined. The Writ Court further took note of the fact that non-examination of the complainant definitely caused prejudice to the delinquent officer and in that backdrop, it rightly went on to hold the departmental proceedings to be a nullity.

21. We are in complete agreement with the view expressed by the Writ Court. Only because a criminal case was pending against the respondent-petitioner in which charge sheet was submitted, that cannot be basis for taking departmental proceedings to conclusion without providing the list of witnesses as also without adducing any evidence in support of the charges. Further, the respondent-petitioner was not allowed to cross-examine the witnesses and in that backdrop, the order passed by the Hon'ble Apex Court in **Roop Singh Negi (supra)** especially paragraph-14 becomes important which is placed herein below:-

“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.”

22. The case of the respondent-petitioner is completely covered by the decision of Hon’ble Apex Court in Roop Singh Negi (supra) case.

23. It seems the Disciplinary authorities deliberately conducted faulty proceeding to the advantage of the charged Officer(s). The Courts have repeatedly cautioned the authorities to act strictly in line with the Bihar CCA Rules, 2005 which is being ignored.

24. It is high time the State Government at the highest level of Chief Secretary, Bihar takes cognizance of



faulty Departmental proceedings and further take necessary corrective measures.

25. So far as the present appeal is concerned, the same fails and is accordingly dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	NAFR
CAV DATE	16.10.2023
Uploading Date	06.12.2023
Transmission Date	

