IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11439 of 2023

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Shyamakant Prasad Son Of Late Shivji Prasad, Retired Circle Officer, Bettiah, Resident Of Village- Sakrar Bazar, P.s- Ramgarhwa, Motihari, District East Champaran presently residing At Mohalla- Kamalnath Nagar, St. Michel School, P.s-town Thana, Bettiah District- West Champaran (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Additional Chief Secretary, Department of Finance, Government of Bihar, Patna.
4. The Additional Chief Secretary, Department of Revenue and land Reforms, Government of Bihar, Patna.
5. The Joint Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
6. The District Magistrate, West Champaran, Bettiah.
7. The Circle Officer, Bettaih Sadar, District- West champaran, Bettiah (Bihar).
8. The Accountant General, (A and E), Birchand Patel Path, Mahalekhakar Bhawan, Patna- 800001.

.. ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Munna Prasad Dixit (M.P. Dixit), Adv.
Mr. Sanjay Kumar Choubey, Adv.,
Mr. Sanjay Kumar Dixit, Adv.,
Ms. Swastika, Adv.
For the State : Md. Fazle Karim, AC to SC-01
For Accountant General : Mr. Ranjay Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 19-09-2023

Heard Mr. Munna Prasad Dixit, Mr. Sanjay Kumar Choubey, Mr. Sanjay Kumar Dixit and Ms. Swastika, learned counsels appearing on behalf of the petitioner, Md. Fazle Karim, learned counsel appearing on behalf of the State and Mr. Ranjay Singh, learned counsel appearing on behalf of the Accountant General.

2. Mr. M.P. Dixit, learned counsel appearing on behalf of the petitioner submits that the departmental proceeding as on date is still pending and the Joint Secretary, Department of Revenue and Land Reforms, Government of Bihar has pre decided to withhold the entire amount of pension and gratuity of the petitioner vide letter dated 17th October, 2022, contained in Annexure-6 to the writ petition which is without jurisdiction. Learned counsel further submits that since the departmental proceeding is pending, the action of the Joint Secretary will prejudice the departmental proceeding and the same will result into mere formalities, as the authority has pre decided to impose punishment vide Annexure-6 by the Joint Secretary, Department of Revenue and Land Reforms, Government of Bihar, respondent no. 5. He submits that it is well settled principle of law that any post date hearing is not in accordance with law.

3. He further submits that during the course of enquiry no oral evidence was produced to prove the charges against the petitioner and further no witness was examined to prove even the said documents which formed the basis of enquiry. He further submitted that neither the complainant nor the Investigating Officer nor the alleged witnesses to the occurrence were examined as oral witnesses in the disciplinary proceeding.

4. He next submits that the present case is a case of no evidence. To substantiate his arguments he relies upon judgments of the Hon’ble Apex Court reported in ***(2009) 2 Supreme Court Cases 570 Roop Singh Negi versus Punjab National Bank And Others, (2010) 2 Supreme Court Cases 772 State of Uttar Pradesh And Others versus Saroj Kumar Sinha*** .

5. In a judgment reported in Roop Singh Negi Case (Supra) the Hon’ble Apex Court recorded its conclusion in paras-14, 15 & 23 which are being reproduced herein below for ready reference:-

> ***“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.***
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> ***15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.***

6. The judgment relied by the petitioner is of no use to him in the present case, who is aggrieved by the decision taken by the Joint Secretary, Department of Revenue and Land Reforms, Government of Bihar, respondent no. 5, who without giving any opportunity or waiting for final result of the disciplinary proceeding, in which the petitioner has already filed his reply to the show cause, has proceeded to forfeit 100 % pension, gratuity (DCRG) and encashment of earn leave, by the order as contained in Annexure-6. The order dated 17.10.2022 as contained in

Annexure 6, cannot be sustained without following the procedure prescribed in Rule 17 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and Rule 43 (b) of the Bihar Pension Rule, 1950 and is fit to be set aside and quashed.

7. A decision taken before the guilt of the petitioner has been established is not maintainable. The order dated 17.10.2022, requires interference as the same has been passed without adhering to the principles of natural justice. Reference can be made to the judgement of Hon'ble Supreme Court in the case of ***S.L Kapoor vs. Jagmohan and others***, reported in ***(1980) 4 SCC 379,*** where the subject with regard to the compliance of the principal of natural justice has been dealt with quite exhaustively with a conclusion that compliance of principle of natural justice is an integral part of rendering justice and ante-thesis of arbitrariness in any form, an avowed object and guiding principle of Article 14 of the Constitution of India.

8. In the case of ***Rash Lal Yadav Vs. State of Bihar*** reported in ***1994(2) P.L.J.R. (SC) 76*** it had been held as :-

> ***"What emerges from the above discussion is that unless the law expressly or by necessary implication excludes the application of the rule of natural justice, courts will read the said requirement in***

enactments that are silent and insist on its application even in cases of administrative action having civil consequences."

9. The matter is remanded back for passing a fresh order in accordance with the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 within a period of three months in accordance with law from the date of copy of this order being served upon him.

10. With the above observation and direction the writ petition stands disposed of.

(Purnendu Singh, J)

pravinkumar/-

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