

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.507 of 2017

In

Civil Writ Jurisdiction Case No.17227 of 2008

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Upendra Pandit, Son of Late Gonar Pandit, Resident of Village -
Shahpur, P.S. - Nabhatta in the district of Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Commissioner, Munger Division, Munger.
3. The District Magistrate, Begusarai.
4. The Civil S.D.O., Bakhari in the District of Begusarai.
5. The Enquiry Officer-cum-District Panchayat Raj Officer, Begusarai.
6. The Circle Officer, Garhpura Circle, District - Begusarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Mishra, Advocate

For the Respondent/s : Mr. Md. Khurshid Alam, AAG-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 05-09-2023

Heard learned counsel for the parties.

2. The instant appeal has been preferred against the judgment dated 15.2.2017 passed in CWJC no. 17227 of 2008 whereby the learned Single Judge did not find any merit in the prayer of the appellant for quashing the order of termination



dated 29.12.2005 and the order dated 30.4.2008 rejecting the departmental appeal and the writ application was dismissed.

3. As per the case of the appellant, he was appointed as a clerk by the Director, Consolidation Department on 11.1.1988 and his service was absorbed on 1.1.1998. He was posted as Revenue *Karmchari* at Circle Office, Bakhari in District-Begusarai. While posted at Bakhari, on an inspection of the office having been carried out on 3.7.2004 by the Sub-Divisional Officer, Bakhari, the appellant was asked to file his show-cause to the allegations levelled against him. He filed his reply. Thereafter, by order dated 14.7.2004, the appellant was placed under suspension and a departmental proceeding was initiated against him with the District Panchayat Raj Officer, Begusarai having been appointed as the Enquiry Officer.

4. The Enquiry Officer submitted his report and a second show-cause notice was issued to the appellant on 16.12.2005, to which he filed his reply on 21.12.2005. By order dated 29.12.2005, the appellant was dismissed from service. He preferred an appeal before the Commissioner, Munger Division, which was also dismissed by order dated 21.2.2006.

5. The appellant challenged both the order of dismissal from service dated 29.12.2005 as also the order



rejecting his appeal dated 21.02.2006 in CWJC no.17227 of 2008. The learned Single Judge by his judgment dated 15.2.2017 was pleased to dismiss the writ petition, against which the instant appeal has been preferred.

6. Besides other contentions raised, learned counsel appearing for the appellant submitted that it is an admitted position that with the charge-sheet neither any document nor any list of witnesses were provided/supplied to the appellant. Further, no Presenting Officer was appointed and the entire proceeding was conducted in absence of a Presenting Officer. Thus, there was clear violation of Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (herein after referred to as the 'Rules of 2005') and as such the order of punishment of dismissal of the appellant as also the appellate order were both non-sustainable and fit to be set aside. It is submitted that the learned Single Judge committed an error in dismissing the writ application.

7. It may be stated here that pursuant to the direction of this Court, the original records of the enquiry were produced before us by learned counsel appearing for the respondents.

8. Having heard learned counsel for the parties and having perused the materials on record, including the original



records with respect to the departmental proceeding of the appellant produced by the respondents it transpires that after having been given an opportunity to file his show-cause on the allegations and not having found the reply of the appellant to be satisfactory, by order dated 14.7.2004 the appellant was placed under suspension and his headquarters was fixed at Circle Office, Begusarai. By order dated 14.7.2004, a departmental proceeding was initiated against him and the District Panchayat Raj Officer, Begusarai was appointed as the Enquiry Officer. Charge-sheet in Form-‘ka’ was served on the appellant with letter dated 27.11.2004 (Annexure-6 to writ application) by the Enquiry Officer.

9. At this stage, it would be relevant to extract Rule 17 (3) and (4) of the Rules of 2005, violation of which is alleged by the appellant:-

“17. Procedure for imposing major penalties.-

.....

(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.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

.....”

10. So far as the facts of the instant case are concerned, on perusal of the charge-sheet in Form-‘ka’, this Court finds that the same mentions about the charges levelled against the appellant, which are ten in number. It also transpires from the records that as many as fourteen witnesses were examined in support of the charges. However, so far as the contents of the charge-sheet and/or the covering letter dated



27.11.2004 is concerned, the same neither contains the list of documents nor the list of witnesses by which the articles of charges were proposed to be sustained.

11. In the opinion of the Court, Rule 17 (3) and (4) of the Rules of 2005 are very clear when they provide that where it is proposed to hold an inquiry against the government servant under the said Rules, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehaviour in support of each article of charge, the same shall contain a statement of relevant facts, list of documents and list of witnesses by which the articles of charges are proposed to be sustained. Thus, non supply of the list of documents and the list of witnesses to the appellant in the instant case on which the disciplinary authority proposed to sustain the charges levelled against the appellant in the disciplinary proceeding as also the proceeding being conducted without appointment of a Presenting Officer was a clear and serious lapse of the provisions of Rule 17 of the Act of 2005. The requirement of Rule 17 (3) and (4) not having been fulfilled, the order of punishment of dismissal from service of the appellant cannot be sustained. Both the orders of dismissal dated 29.12.2005 and the order dated 30.04.2008 rejecting the



appeal preferred by the appellant are both set aside. The order of the learned Single Judge also cannot be sustained and is hereby set aside.

12. The appeal is allowed with all consequential benefits. There cannot be a resumption of the enquiry proceedings, from the stage at which the defect is noticed, since by virtue of the appellant having crossed the age of superannuation there exists no employer-employee relationship. In view of the order of dismissal having been passed on 29.12.2005 and the appellant having superannuated from service with the passage of time, although the appellant has not worked, in the facts of the case, it is directed that the appellant will be entitled for 50 percent of his arrears of salary which will be paid to the appellant within a period of four months. The appellant will also be entitled for pension admissible to him as per law and arrears, if any, under this head shall also be paid, fully within four months. It is made clear that in computation of pension, the full salary due to the appellant shall be reckoned as the last pay drawn, despite our limiting disbursement of salary to 50% for the remaining period of service. In case of the petitioner not being paid the amount under any head, for no fault of his, he will be entitled



for interest on the total unpaid amount at the rate of 8% p.a.
from the date of this order.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N/A
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