

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22235 of 2018

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Rajesh Prasad, Son of Rajbansh Prasad, Resident of Village- Usuf Chak,
Takiya, Post Office- Takiya Bazar Samiti, Police Station- Sasaram, District-
Rohtash.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, New Secretariat, Patna.
2. Principal Secretary, Department of General Administration, Government of Bihar, New Secretariat, Patna.
3. Additional Secretary, Department of General Administration, Government of Bihar, New Secretariat, Patna.
4. Registrar General, Patna High Court, Patna.
5. District and Session Judge, Madhepura.
6. District and Session Judge-Cum- Enquiry Officer, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate. Mr. Sanjeet Kumar, Advocate.
For the High Court	:	Mr. Piyush Lall, Advocate.
For the State	:	Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 22-02-2023

We have heard Mr. Rajendra Narain, learned senior advocate, assisted by Mr. Sanjeet Kumar, advocate for the petitioner, Mr. Piyush Lall, for the High Court and Mr. Suman Kumar Jha, for the State.

2. The petitioner, by invoking Article 226 of the Constitution of India, seeks quashing of the notification



contained in Memo No. 7580 dated 08.06.2018, issued by the Additional Secretary, Department of General Administration, Government of Bihar, by which the services of the petitioner, who was working as Additional Munsif, Madhepura, has been dismissed on the recommendation of the Registrar General of the Patna High Court, contained in Memo No. 35491 dated 05.05.2018. The petitioner further seeks for a direction to the respondents to produce the recommendation of the Registrar General of the Patna High Court, contained in Memo No. 35491 dated 05.05.2018 as it has not been supplied to him and on the production of the same, be pleased to quash the same on the basis of which the impugned order dated 08.06.2018 has been passed. The petitioner has lastly prayed for a direction to the respondents to reinstate him in service with all consequential benefits, including arrears of salary.

3. The short facts which led to the filing of the present writ petition is that the petitioner was appointed as Civil Judge (Junior Division) on 09.10.2007 and posted at Aurangabad as Civil Judge (Junior Division) on probation. While he was working as Judicial Magistrate 1st Class, Sherghati under the Gaya judgeship, the learned District and Sessions Judge, Gaya, on the asking of the Registrar (Vigilance), Patna



High Court, directed the petitioner to submit his comment on a news item published in local daily with respect to his alleged conduct of extending cooperation and providing shelter to two accused persons in his official accommodation and facilitating their safe passage to flee away. In response to the aforesaid letter, the petitioner submitted his comment. Thereafter, again the High Court vide letter no. 52713 dated 10.10.2014, directed the District and Sessions Judge, Gaya, to obtain information from the petitioner on certain points as mentioned in the said letter which was duly served upon the petitioner, who in turn submitted his reply vide letter no. 238 dated 15.10.2014, which was forwarded to the High Court.

4. This matter was placed before the Standing Committee of the High Court in its meeting held on 18.11.2014, wherein the Committee resolved that a disciplinary proceeding be initiated against the petitioner in connection with his involvement in Hind Pidhi P.S. Case Nos. 742 of 2014 and 799 of 2014 and for his conduct unbecoming of a Judicial Officer. It has been further resolved that the petitioner be transferred and posted as Additional Munsif, Madhepura, and be kept under watch for one year with further direction to the District and Sessions Judge, Madhepura, to submit quarterly report to the



High Court. Subsequently, pursuant to the decision of the Standing Committee of the High Court, a departmental proceeding was initiated against the petitioner and a Memo of Article of Charge supported by statement of allegations, list of witnesses and documents enclosed therewith was handed over to him. The District and Sessions Judge, Katihar was appointed as Enquiry Officer whereas the senior most Judicial Magistrate 1st Class, Katihar as the Presenting Officer.

5. The charges against the petitioner related to act of committing gross misconduct, reflecting on his integrity unbecoming of a Judicial Officer as he was *prima facie* found involved in providing shelter at his official residence and personally facilitating escape from the process of criminal law of two accused persons of Ranchi Kotwali (Hind Pidhi) P.S. Case No. 742 of 2014 instituted under Sections 498A/34, 153A and 295A of the Indian Penal Code, namely, Ranjit Singh Kohli and his mother Kaushal Rani and for which a separate criminal case had been lodged against the petitioner vide Ranchi Kotwali (Hind Pidhi) P.S. Case No. 799 of 2014 for the offence punishable under Section 212 of the Indian Penal Code. He was also charged with making a false statement to the police during investigation of Ranchi Kotwali (Hindpidhi) P.S. Case No. 799



of 2014 as also of having made a misstatement in his above explanation dated 01.09.2014 to the District and Sessions Judge, Gaya.

6. The petitioner submitted his exhaustive written statement of defence (vide Annexure-7 to the writ petition) to the above Articles of Charge, denying all the charges levelled against him.

7. During the pendency of the aforementioned departmental proceeding, on a request made by the learned District and Sessions Judge-cum-Enquiry Officer, Katihar, the Standing Committee of the High Court in its meeting held on 04.10.2016 resolved to appoint Sri Umesh Kumar Sharma, Sub Judge, Katihar, as the Presenting Officer in the departmental proceeding and in view of the charge-sheet having been submitted by the C.B.I. against the petitioner an additional charge in respect thereof be framed in the said proceedings. An extension of time for concluding the departmental proceeding was also requested.

8. An additional charge was framed against the petitioner in the above departmental proceeding, the copy of which was duly served upon him along with the statement of allegations, list of witnesses and documents. The additional



charge related to his act showing gross judicial misconduct and misdemeanor etc. leading to submission of charge-sheet against him in Ranchi Kotwali (Hind Pidhi) P.S. Case No. 799 of 2014 (re-designated as CBI Case No. RC-11(s)/2015/SC-1/New Delhi) for having conspired by giving patronage and shelter to the above accused persons of Ranchi Kotwali (Hind Pidhi) P.S. Case No. 742 of 2014 and accompanying them for their safe passage from Sherghati to Patna and from Patna to New Delhi.

9. The petitioner submitted his additional written statement of defence to the above additional charge in the departmental proceeding as contained under the Memorandum dated 15.12.2016, raising all his defence as contained therein.

10. The enquiry having been completed by the Enquiry Officer, enquiry report was submitted vide letter no. 4060 dated 18.10.2017, wherein the charges and additional charge against the petitioner stood proved and established. The Standing Committee of the High Court having considered the enquiry report, in its meeting held on 12.12.2017, resolved to issue second show-cause against the delinquent petitioner. The petitioner on receipt of the same submitted his reply on 23.01.2018 to the second show-cause notice.

11. The Standing Committee in its meeting held on



22.02.2018 considered the show-cause reply and was pleased to resolve as follows:

"It is resolved that the officer concerned namely Sri Rajesh Prasad, the then Judicial Magistrate 1" Class, Sherghati presently posted as Additional Munsif, Madhepura (under suspension) should not be allowed to continue in service in view of the allegations and involvement in a grave offence and gross misconduct having no temperament of a Judicial Officer and accordingly he is dismissed from service, whose service has not yet been confirmed due to his misconduct since his joining in service on 09.10.2007. Put up the matter before the Hon'ble Full Court for consideration".

12. The matter was thereafter referred to the Full Court of the High Court which in its meeting held on 25.04.2018, further resolved as here under:

"After due deliberations and discussions resolved to accept the resolution of the Standing Committee dated 22.02.2018, recommending imposition of punishment of dismissal from service of Sri Rajesh Prasad, the then Judicial Magistrate 1" Class, Sherghati presently posted as Additional Munsif, Madhepura. Accordingly he be dismissed from service. State Government be intimated accordingly."

13. The aforementioned decision of the Full Court was



intimated to the State Government in its General Administration Department vide Memo No. 35492-95 dated 05.05.2018 with a request that necessary notification giving effect to the same be issued at the earliest. Pursuant thereto, the State Government in the General Administration Department vide its Notification No. 7580 dated 08.06.2018 (Annexure-1 to the writ petition) dismissed the petitioner from Service under Rule 14(xi) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for short “the Rules, 2005”). The aforesaid notification was duly served to the petitioner and a receipt thereof was sent to the High Court.

14. Mr. Narain, while assailing the impugned order of dismissal vehemently contended that from perusal of both the Memo of Charges and the allegations made in Kotwali (Hind Pidhi) P.S. Case No. 799 of 2014, would reveal that there are common allegations in both the proceedings, save and except that the petitioner had given shelter to the two accused persons in his official residence at Sherghati and thus it was urged to await the outcome of criminal case before proceeding further in the departmental proceeding as the charges were similar in both the proceedings. But the disciplinary authority proceeded with the departmental proceeding and the impugned order was



passed, which is in the teeth of the mandate of the Hon'ble Supreme Court rendered in the case of **M. Paul Anthony vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416**. He further submitted that the charges have also not been framed as per the provisions contained in Rule 17(3) of the Rules, 2005, which stipulates that disciplinary authority will draw definite and distinct article of charge, but here the charges are vague, not definite and distinct. Further submission has been made that the departmental proceeding also stands vitiated for the violation of the provision of Rule 17(15) of the Rules, 2005, as the witnesses who were not even named in the charge-sheet were examined in the departmental proceeding, without giving any prior notice to the petitioner which has caused serious prejudice to the petitioner and the act of the respondents is in complete violation of the Rules of Natural Justice.

15. It has further been contended that the prosecution has relied upon the documents, which were neither mentioned in the list of documents of both the memo of charges nor were supplied to the petitioner. On the other hand, the petitioner submitted several documents pertaining to charges levelled against him but the same was not even marked as exhibit, causing prejudice to him.



16. Mr. Narain, thus submitted that the dismissal order has been passed without any consideration of the second show-cause reply submitted by him. Various discrepancies and contradictions in the deposition of witnesses were shown. Apart from the above, under the provision of Rules, 2005, a duty it was argued, has been cast upon the Enquiry Officer to discuss each and every charge considering the evidence of both the sides and give an unbiased finding to each and every charge. The enquiry report, it was pointed out, did not contain any findings on individual charge; rather the finding was given clubbing all the charges and evidence and for this reason alone, the enquiry report which is the very basis of the impugned order, not being in accordance with the provisions of Rules, 2005, is fit to be rejected. He lastly submitted that even otherwise, the punishment of dismissal from service is disproportionate to the charges levelled against him. It is, Mr. Narain contended, is shocking to the conscience of any prudent man, requiring interference.

17. *Per contra*, Mr. Lall, for the High Court, while refuting the submissions/contentions of the petitioner, submitted that the charges against the petitioner related to the act of committing gross misconduct reflecting on his integrity,



unbecoming of a Judicial Officer, as he was found involved in providing shelter at his official residence and personally facilitating the escape from the process of criminal law of two accused persons of Ranchi Kotwali (Hind Pidhi) P.S. Case No. 742 of 2014, apart from making a false statement to the police and before the learned District and Sessions Judge, Gaya. The aforementioned misconduct of the petitioner, for which he was charged with, was a deliberate act with full knowledge, which does not come within the purview of his official discharge of duties.

18. He further submitted that the plea of the petitioner that charges framed against him were identical to the allegation levelled against him in Kotwali (Hind Pidhi) P.S. Case No. 799 of 2014, is quite misleading because from the charges framed against the petitioner vide Memo of Charge dated 09.05.2016, and additional Memo of Charge dated 15.12.2016, it would be evident that the charges also related to his conduct of making a mis-statement in his reply dated 01.09.2014 to the District and Sessions Judge, Gaya, and also making false statement that his senior functionaries of the Court had suggested him not to furnish any document to the Investigating Officer. The second Memo of Charge related to C.B.I. submitting charge-sheet



against him and recommending taking of cognizance against him. This was an independent and distinct charge and thus all of them amounted to committing gross misconduct and reflected on his integrity.

19. Mr. Lall further submitted that it is not mandatory for the disciplinary authority to await the outcome of criminal proceeding against the delinquent employee in a departmental proceeding, especially when the charges, evidence, witnesses and circumstances in the two proceedings are not one and the same as is the case herein. The post held by the petitioner and the nature of duties being discharged by him did not mandate any direct contact with litigants. He, in such circumstance, ought not to be allowed to discharge sovereign functions of the State, as he stood as an accused in a criminal case for abetting crime with full knowledge about it in which charge-sheet had been submitted against him and cognizance taken. He next submitted that the charges contained in the two Memo of Charges against the petitioner dated 09.05.2016 and 15.12.2016, respectively, would show that they were framed in conformity with the provisions of the 2005 Rules and were not vague rather were specific based on the misconduct of the petitioner supported by the accompanying statement of allegations.



20. The contention of the petitioner regarding witnesses being examined without any notice to him as they had not been mentioned in the list of witnesses and thus in violation of Rule 17(5) of the Rules, 2005, as also have had caused prejudice to him, has completely been denied.

21. Mr. Lall, drew the attention of this Court to the relevant paragraphs mentioned in the counter affidavit and on the basis thereof, he submitted that the four witnesses, who were summoned as prosecution witnesses had appeared after about 25, 40 and 55 days from 19.06.2017 when summons were issued. On their appearance, they were examined in presence of the petitioner and he cross-examined them in detail. Neither during the course of argument nor in his written argument, the petitioner made any grievance with respect to the four persons being produced as prosecution witnesses or that they appeared without prior notice to him or it was in violation of Rules, 2005, or it had caused prejudice to him in his defence in any manner on this account; rather the petitioner relied upon the depositions made by them in his defence including their statements during their cross-examination which were in support of his written argument as also in his reply to the second show-cause notice. The petitioner failed to show as to what actual prejudice was



caused to him.

22. It was further stressed that the petitioner, at no point of time, made any grievance with regard to the non-production of any document; rather he filed an application dated 10.10.2017 before the Enquiry Officer stating that he had applied for certified copies of all exhibited documents of the prosecution and he has only alleged therein that the office did not provide any exhibited documents of defence and save and except bald statement of prejudice, it has not been submitted as to what actual prejudice has been caused to the petitioner on account of non-supply of certain documents as claimed by him. It is a settled law that strict rule of evidence do not apply to departmental proceeding and documents merely not being marked as exhibits cannot *per se* lead to cause prejudice and such prejudice if caused should satisfy the test of actual prejudice, which the petitioner has failed to prove.

23. While concluding his submissions, Mr. Lall also submitted that the petitioner knowingly and with full knowledge helped the two accused persons of Kotwali (Hind Pidhi) P.S. Case No. 742 of 2014 to escape from the process of law by firstly providing them shelter at his official residence and thereafter accompanying one of them to Delhi and providing his



own vehicle to go to Delhi stand proved against the petitioner and that his defence that it was only in the evening of 24.08.2014, he came to know that said two persons were accused in the said case was not found to be correct in the departmental proceeding against him. The decision to dismiss the petitioner from service was taken by the Full Court on 25.04.2018, approving the decision of the Standing Committee of the High Court on 22.02.2018, on account of the charges of grave misconduct, which were unbecoming of a Judicial Officer. The aforementioned decision of the Full Court was communicated to the State Government and on the basis of the same, the Notification dated 08.06.2018, was issued dismissing the petitioner from service. The petitioner was dismissed on the recommendation of the High Court in which the disciplinary control of the petitioner vests, by the State Government being the appointing authority, vide Notification dated 08.06.2018, by notifying the decision of the High Court, which is binding on it. Thus the petitioner cannot be allowed to submit that the Notification dated 08.06.2018, shows non-consideration and deliberation; rather the recital of the Notification dated 08.06.2018, has been issued after due consideration and deliberation supported by reasons keeping in view of the same



being affirmed in a departmental proceeding as is required in law.

24. Learned counsel for the State has also supported the contentions made on behalf of the High Court and reiterated/adopted the submissions made on its behalf.

25. This Court has given anxious consideration to the submissions made on behalf of the parties at length.

26. Before parting with the final outcome, it would be apt to observe that the confidence of the litigant gets affected or shaken by lack of integrity and character of Judicial Officer. Judicial officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. Dishonesty is the stark antithesis of judicial probity. "A dishonest judicial personage is an oxymoron".

27. A judge is judged not only by the quality of his judgments, but also by the quality and purity of his character and the measurable standard of that character is impeccable integrity which should reflect in his personal life also. One who corrects corruption should be incorruptible. Therefore, any departure from such pristine codes and values of discipline by



the petitioner is required to be viewed seriously, lest the very foundation of the system would be shaken. There is no gainsaying that while it is imperative for the High Court to protect honest and upright judicial officers against motivated and concocted allegations, it is equally necessary for the High Court not to ignore or condone any dishonest deed on the part of any judicial officer.

28. In **H.C. Sarin vs. Union of India and Others**, **AIR 1976 SC 1686**, the Apex Court has placed reliance on the judgment of **Lord Denning in R.R. vs. Secretary of State for the Home Department ex parte Mughal (1973) 3 All ER 796**, wherein it has been observed as under:

“The rule of natural justice must not be stretched too far. Only too often, ‘the people who have done wrong seek to involve the rule of natural justice; so as to avoid the consequences.’”

29. The case in hand suggests that the departmental proceeding initiated against the petitioner is based on the charges which are distinct charges of misconduct of showing a conduct which is unbecoming of a Judicial Officer. Hence, the principle enunciated by the Apex Court in **M. Paul Anthony (supra)**, will not be applicable in the present case.

30. The Enquiry Officer has assiduously taken into



consideration all the details and an exhaustive enquiry report has been submitted. On the basis thereof, the petitioner has been served with second show-cause notice and after proper deliberation and consideration, the disciplinary authority has recommended for dismissal of the petitioner. Once the disciplinary authority accepts the finding recorded by the Enquiry Officer, thus no detailed reasons are required to be recorded in the order imposing punishment. The punishment is based on the findings of the Enquiry Officer itself, which could not be shaken by the delinquent petitioner in his reply to the second show-cause.

31. We have also gone through the materials placed on record and also perused the enquiry report, which *prima facie* suggest that there is sufficient evidence that the petitioner was aware about the crime committed by Ranjit Singh Kohli and his mother and despite knowing this fact, when the accused persons arrived at his official residence, he provided food and shelter to them at Sherghati and chalked out their safe escape in the night on 22.08.2014 at his residence, from where one of the accused proceeded to Delhi by road and the petitioner ensured the safe escape of accused Kaushal Rani from Sherghati to Patna and thereafter from Patna to New Delhi by Air. Joining of



main accused at Delhi by the petitioner at a Hotel and booking and payment for his family for the Air Tickets by the accused persons establishes that the petitioner has taken all these pains only to ensure the safe escape of accused persons. Further, the plea of the petitioner justifying the visit to Delhi in emergency arises in connection with his medical treatment of knee problem was found to be an afterthought. Based on such evidence, the disciplinary authority held the delinquent officer to be guilty of the charge.

32. This Court cannot act as an appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence available on record. The Court can interfere only where the authority holds the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion of findings reached by the disciplinary authority is based on no evidence.

33. The disciplinary authority on scanning the enquiry report and having accepted it, after discussing the available and admissible evidence on the charge, has recommended for the punishment of dismissal from the service



to the petitioner. It is not open to this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India to go into the proportionality of punishment so long as the punishment is not shocking to the conscience of the Court.

34. In the instant case, the petitioner was holding a position of trust where honesty and integrity was required. Thus the matter cannot be dealt with leniently.

35. In the instant case, the disciplinary authority has come to the conclusion that the petitioner lacked integrity and his conduct is of unbecoming of a Judicial Officer warranting discontinuance in service.

36. We therefore, do not find any reason to interfere with the order of dismissal of the petitioner.

37. The writ petition is dismissed.

38. Cost Easy.

(Ashutosh Kumar, J)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21-06-2023
Transmission Date	

