

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20662 of 2012

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Nisar Ahmad Khan Son Of Abdul Hai Khan Resident Of Mohalla - Baheri
Sheikh Toli, P.O. P.S. District - Balia, State U.P. posted As Junior Engineer,
Under Gandak Design Division No. 3, Motihari, Bihar, Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Water Resources, Government of Bihar, Patna
2. The Engineer-In-Chief Middle Department Of Water Resources, Government Of Bihar, Patna
3. The Executive Engineer, Gandak Design Division No. 1, Motihari

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Respondent/s : Mr. P.N. Sahi, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 17-07-2023

Heard learned counsels for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“i) A writ in the nature of certiorari setting aside the impugned memo No. 1249 dated 11.10.2011 as contained in Annexure-11 issued under the signature of Respondent No. 2 whereby and whereby in contemplation of a departmental proceeding petitioner has been dismissed from service;

ii) To quash the office order vide memo No. 904 dated 13.08.2012 as contained in Annexure-12 whereby and where-under appeal preferred by the petitioner has been rejected without considering the



points raised by the petitioner as also without giving any finding based upon the records of the case;

iii) A writ in the nature of mandamus commanding and directing upon the Respondents concerned to reinstate the petitioner in service with all consequential monetary benefits;

iv) Any other relief/reliefs for which the petitioner is found entitled to in the facts and circumstances of the case.”

3. On 05.07.2023, following order was passed:

“The Principal Secretary, Water Resources Department, Government of Bihar, Patna is hereby directed to file his personal affidavit after going through the inquiry records as to whether petitioner has been provided article of charge along with statement of imputation, list of documents, list of witnesses or not? If it is provided to the petitioner who were all the witnesses cited in the list of witnesses and who were all examined and cross-examined during the course of the departmental inquiry before the inquiring authority. How the inquiring officer has analyzed the evidence adduced by witnesses, these material information shall be revealed in the personal affidavit with reference to inquiry records.

2. He is also hereby directed to produce original departmental inquiry records so as to examine is there any compliance to the various provision of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005.

3. Re-list this matter on 12.07.2023. It is made clear that no further time would be granted for the reasons that the present matter is pending consideration for more than one decade.”



4. *Mr. Chaitanya Prasad*, Additional Chief Secretary, Water Resources Department, Bihar, Patna has filed supplementary counter affidavit on behalf of respondent No. 1.

5. *Prima facie*, there is no compliance to the order dated 05.07.2023 insofar as filing of personal affidavit of the Principal Secretary. In other words, Additional Chief Secretary *Mr. Chaitanya Prasad* has not read the previous order before filing the supplementary counter affidavit on behalf of respondent No. 1. The same is deprecated. In other words, bureaucrats in the State of Bihar without looking into Court orders file certain application/affidavit. Even the respective State counsel have not apprised the concerned official in pointing out the specific order that the affidavit should be in the manner known to the previous order.

6. Copy of this order shall be made available to the Chief Secretary for issuing certain directions to all Secretariat Officials including Heads of the Department who are handling the Court matters.

7. Coming to the present case. In the supplementary counter affidavit dated 12.07.2023, in paragraph Nos. 9 to 13, it is stated as under:

“9. That it appears from the records that along with the aforesaid resolution, memo of charges



and list of documents were served to the petitioner but list of witnesses has not been found in the records. Also in the enquiry report there is no mention of list of witnesses and there is no discussion that any witness was examined or cross examined. It also appears that the petitioner did not make any request to the enquiry officer for examination of any witness. However it is apparent from the enquiry report that the petitioner participated in departmental enquiry and submitted written statement of his defence. He was heard personally by the enquiry officer.

10. That it appears from the enquiry report that the enquiry officer examined the written statement of defence of the petitioner and found that the petitioner has failed to produce any cogent evidence in support of his defence. He produced only new clippings which cannot be accepted as evidence. The measurement book of the scheme was recovered from the residence of the petitioner though the measurement of the work had already been entered in the measurement book on 23.08.2002 and therefore the measurement book should have been submitted in block office. The enquiry officer also relied upon the supervision note of the Superintendent of Police, Vigilance in which allegations against the petitioner were reported to be true. After due consideration of the entire material, the enquiry officer held the charges proved against the petitioner.

11. That having been agreed with the enquiry report, second show cause notice was issued to the petitioner on the point of proposed punishment vide letter no. 1989 dated 31.12.2010 enclosing a copy of the enquiry report. The petitioner demanded some documents vide application dated 09.02.2011 and the



available documents were supplied to him vide letter no. 347 dated 24.03.2011.

12. That the petitioner submitted reply to the second show cause notice which was not found satisfactory and he was awarded with punishment of dismissal from service vide order no. 89 as contained in memo no. 1249 dated 11.10.2011 for the charges proved against him. The petitioner submitted appeal representation against the said punishment which was rejected by the appellate authority vide order no. 121 as contained in memo no. 904 dated 13.08.2012 after due consideration of the matter.

13. That it would be evident from the aforesaid facts that the departmental proceeding against the petitioner was conducted under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 and not under the provision of the Bihar Government Servants (Classification, Control and Appeal), Rules, 2005 since the said proceeding was initiated by the State of Jharkhand in the year 2003 under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930.”

8. Alleged allegation is that petitioner is stated to have demanded and accepted illegal gratification while holding the post of Junior Engineer. The complainant has not been examined and so also none of the officials have been cited and examined in support of the alleged allegation relating to demand and acceptance of illegal gratification.

9. Perusal of the contents of the affidavit, it is evident that Superintendent of Police, Vigilance who had made allegation



against the petitioner and it is stated to be proved, he is also one of the crucial witness to be cited as well as examined insofar as proving the alleged allegation relating to demand and acceptance of illegal gratification by the petitioner. These are all serious lacunae and they are in violation of principle of natural justice.

10. Nodoubt it is a case of remand, however, having regard to the fact that the alleged allegation relates back to of about two decades and the fact that the petitioner, if he is in service, he would have attained age of superannuation and retired from service on 15.05.2015. Taking note of all these material information, it is a case of no evidence. However, there are serious allegation relating to demand and acceptance of illegal gratification, therefore, in order to give *quietus* to the litigation it is necessary to remand the matter to the disciplinary authority to convert the order of dismissal dated 11.10.2011 to that of compulsory retirement from the date he was dismissed from service and proceed to settle his retiral benefits as if he has retired from the date of dismissal and if any re-fixation of pay with reference to revision and consequential benefits, if any, as on the date of dismissal shall be calculated and based on such re-fixation of pay, the petitioner's pension shall be fixed. The above exercise



shall be completed within a period of four months from the date of receipt of copy of this order.

11. It is to be noted that this Court would have modified the penalty of dismissal to that of compulsory retirement, however, this Court is not sitting in appeal over the penalty order so as to modify the penalty order in the light of various judicial pronouncements.

12. Parallel proceedings were initiated against the petitioner insofar as criminal proceedings is concerned, it is still pending consideration before the jurisdictional Court. It is to be noted that disciplinary and criminal proceedings are two independent proceedings. Criminal proceedings is in respect of offence and departmental proceedings is in respect of misconduct.

13. Accordingly, order dated 11.10.2011 and 13.08.2012 stand set aside. Writ petition is allowed.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.07.2023
Transmission Date	NA

