

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.634 of 2022
In
Civil Writ Jurisdiction Case No.7631 of 2016

1. The State of Bihar
2. The Secretary, Department of Labour Resources, Government of Bihar, Patna.
3. The Labour Commissioner, Bihar.
4. The Assistant Labour Commissioner (Research), Labour Resources Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

Mithilesh Kumar S/o Ram Janam Prasad, R/o-Village Parahia, P.O.-Khijhwa,
P.S.-Raghunathpur, District-Siwan. Respondent/s

Appearance :

For the Appellant/s : Mr. P.K. Shahi, Advocate General
Mr. Sarvesh Kumar Singh, AAG-13
Mr. Rajat Kumar Tiwary, AC to AAG-13

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 12-10-2023

Heard the parties.

2.The appellant-State of Bihar has preferred the present appeal challenging the judgment and order dated 31.8.2021 passed by the Hon'ble Single Judge in C.W.J.C. No. 7631 of 2016 by which the writ petition was allowed granting liberty to the respondents to take appropriate action against the petitioner in accordance with law in future based on the outcome of the criminal case registered against him in relation



to the occurrence in question.

3. The brief facts leading to the present appeal is/are as follows:

(i) the respondent-petitioner at the relevant time was deputed as the Block Development Officer, Parwalpur, Nalanda. A Vigilance team conducted a raid on 03.02.2011, the petitioner was caught red handed accepting the bribe worth Rs. 10,000;

(ii) the respondent-petitioner after the raid remained under police custody until 26.04.2011. He later joined the post but was again put under suspension;

(iii) later, he was served with memo of charge on 31.05.2012. The allegation against him was regarding the acceptance of bribe worth Rs. 10,000/- from the complainant Shri Mohan Lal, the then Mukhiya of the Shankardih Panchayat;

(iv) the respondent-petitioner submitted his



reply vide letter dated 18.04.2013 and denied all the charges leveled against him. He further narrated that the file relating to the project for which he has been implicated, was not even put up before him and thus there was no occasion for any demand from the complainant.

(v) the Enquiry Officer after making a detailed enquiry submitted a report dated 16.08.2013 to the Respondent No. 3 accepting the stand of the writ petitioner stating that the fact that at the relevant point of time, the concerned file was not put up by the Panchayat Secretary for administrative approval. (vi) the Enquiry Officer gave specific finding that the charges leveled against the the respondent-petitioner are difficult to prove;

(vii) however, vide letter dated 15.01.2014 the Respondent No. 3 without differing with the report of the Enquiry Officer, asked for 2nd show cause from the writ



petitioner;

*(viii) he submitted the reply on
30.01.2014;*

*(ix) thereafter the impugned order of
dismissal dated 05.02.2014 was issued;*

*(x) an appeal was preferred before the
Respondent No. 2 which was rejected
vide an order dated 16.10.2014.*

4. Aggrieved, the sole respondent-writ petitioner preferred C.W.J.C. No. 7631 of 2016 which was taken up by the Hon'ble Single Judge on 31.8.2021 and after hearing both sides, the writ petition was allowed holding that:

(i) the prosecution failed to lead any oral evidence in support of the charge that the writ petitioner demanded bribe money or was arrested while accepting the bribe;

(ii) further, no member of the raiding team as also the complainant was/were examined. Even those present at the place of occurrence were not examined;

(iii) the Enquiry Officer recorded in his report that the allegation of demand or acceptance of bribe



could not be taken into departmental proceeding;

(iv) the Enquiry Officer rightly recorded the charge of demand of bribe money was not proved;

(v) however, the disciplinary authority on the other hand without differing with the said conclusion arrived at by the Enquiry Officer and incorporating his notes of disagreement, put the writ petitioner on second show cause which followed the dismissal order;

(vi) the Disciplinary Authority thus erred in coming to the finding that the charge against the respondent-petitioner stands proved;

(vii) thus, the punishment order was a result of non-application of mind.

5. Accordingly, the writ petition was allowed on 31.8.2021. Hon'ble Single Judge however, gave liberty to the respondents to take appropriate steps in accordance with law in future based on the outcome of the criminal proceedings against him.

6. Aggrieved, the State of Bihar has preferred the present appeal.

7. We have heard Mr. P.K. Shahi, learned



Advocate General duly assisted by Mr. Sarvesh Kumar Singh, learned AAG-13 for the appellant and perused the order of Hon'ble Single Judge passed in C.W.J.C. No. 7631 dated 31.8.2021.

8. The Hon'ble Single Judge in his order dated 31.8.2021 has given sufficient reason to allow the writ petition and has already been recorded in the earlier paragraphs.

9. The points of appeal state that the charges against the sole respondent-writ petitioner was serious and proved during the departmental enquiry and further he was unable to prove that he was not arrested by the raiding team while taking bribe.

10. It seems the State of Bihar has tried to shift the responsibility on the respondent-writ petitioner to prove the charges instead of conducting proper departmental proceeding as envisaged under the Bihar Government Servants (Clarification, Control and Appeal) Rules, 2005.

11. It is high time the State Government takes cognizance of the faulty Departmental Proceedings being conducted by Disciplinary Authorities in most of the cases to the advantage of the charged employee and accordingly take corrective measures.



12. So far as the present appeal is concerned, we are fully satisfied with the reasoning given by the Hon'ble Single Judge in its order dated 31.8.2021.

13. The LPA No. 634 of 2022 is dismissed.

(K. Vinod Chandran, CJ)

Ravi/-

(Rajiv Roy, J)

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	17.10.2023
Transmission Date	

