

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16596 of 2012

=====

Ratneshwar Mishra Son Of Shiva Nand Mishra Resident Of Village- Nonaity,
P.O. P.S.- Sonbarsa, District- Saharsa

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors Bihar, Patna
2. The Secretary Of Government Of Bihar, Revenue And Land Reforms Department
3. The Deputy Secretary To Government Of Bihar, Revenue And Land Reforms Department
4. The Joint Secretary To Government Of Bihar, Vigilance Department, Patna
5. The Commissioner, Purnea Division, Purnea
6. The District Magistrate, Purnea
7. The Circle Officer, Rupauli, Purnea
8. Sri Rajendra Ram, Deputy Collector-Cum-A.D.M., And Enquiry Officer, Purnea

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Sunil Kumar Verma, Advocate Mr.Suman Kumar Verma, Advocate Mr.Anish Kumar, Advocate Mr.Amresh Kumar Mishra, Advocate
For the Respondent/s	:	Mr.Manish Kumar, Ac to Aag-6

=====

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

Date : 19-10-2023

In the instant petition, petitioner has prayed for the following relief(s):-

“For quashing of the Inquiry Report of the Enquiry Officer (Respondent No. 8) (as contained in Annexure-18) as well as the order dated 02.08.2012 as contained in Memo No. 2216 (Annexure-19) passed by the respondent No. 6 the District Magistrate, Purnea, whereby and where under the petitioner has been dismissed from service with effect from the date of issue of the order i.e. 02.08.2012. The petitioner further prays for the grant of any other relief(s) which he be found to



be entitled in the facts of the instant case.”

2. This is a second round litigation insofar as initiation and completion of inquiry against the petitioner. Petitioner while working as a Head Clerk is alleged to have involved in demand and acceptance of illegal gratification for a sum of Rs. 1,000/- (Rupees One Thousand Only) from the complainant – Mr. Prashant Kumar Singh. Arising out of the aforementioned allegation parallel proceedings were initiated by the State Authorities like departmental/criminal proceedings. Criminal proceedings is stated to have been pending consideration before the jurisdictional Court.

3. The petitioner was charge-sheeted in departmental inquiry while framing charges on 10.12.2010, it was concluded in imposition of penalty of dismissal from service on 30.07.2011. Thereafter, petitioner had preferred appeal before the Appellate Authority and suffered an order. Thus, he has invoked remedy of filing writ petition before this Court, in CWJC No. 2162 of 2012 and it was decided on 29.02.2012, insofar as quashing the disciplinary authorities order of dismissal and its confirmation by Appellate Authority and remanded the matter to the Disciplinary Authority to commence inquiry from the defective stage. Further, matter was proceeded and Inquiring Officer had furnished report



on 29.05.2012 on receipt of Inquiring Officer's report, disciplinary authority proceeded to issue show-cause notice on 11.07.2012. Thereafter, on 02.08.2012, petitioner was once again dismissed from service. Even though the petitioner had remedy of appeal before the Appellate Authority against the order of dismissal dated 02.08.2012. However, at this belated stage he cannot be relegated to Appellate Authority. That part the present petition is admitted for hearing.

4. Learned counsel for the petitioner submitted that it is a clear case of no evidence. On this issue, learned counsel for the petitioner submitted that none of the witnesses have been examined and cross-examined in support of the alleged allegations relating to demand and acceptance of illegal gratification a sum of Rs. 1,000/- (Rupees One Thousand Only) from one Mr. Prashant Kumar Singh. It is also submitted that in fact complainant Mr. Prashant Kumar Singh who is a prime witness in the subject matter has not been examined and cross-examined to prove that the alleged allegations relating to demand and acceptance of illegal gratification a sum of Rs. 1,000/- (Rupees One Thousand Only) from Mr. Prashant Kumar Singh. Therefore, the impugned order of dismissal dated 02.08.2012 is liable to be set aside. It is also submitted that during pendency of the present petition, if the



petitioner was in service, in such circumstances he would have attained age of superannuation and retired from service on 30.11.2015.

5. *Per contra*, learned counsel for the respondents vehemently contended that having regard to the alleged allegation of demand and acceptance of the illegal gratification, imposition of penalty of dismissal from service is in order. Therefore, no interference is called for.

6. Heard the learned counsel for the respective parties.

7. Perusal of the Inquiring Officer's report at Annexure-18 to the writ petition, it is evident that complainant – Mr. Prashant Kumar Singh who would have been prime witness for the alleged allegations of demand and acceptance of illegal gratification has not been examined and cross-examined so as to prove the alleged charge against the petitioner. Further, none of the witnesses have been examined. Even based on records, the evidence has not been adduced on behalf of the department/presenting officer. These are all serious lacuna in a departmental inquiry. In fact, Apex Court in the case of ***Kuldeep Singh vs. Commissioner of Police*** reported in ***(1999) 2 SCC 10*** held that ordinarily Court will not interfere in a departmental inquiry and Court will interfere if there are any perverse evidence. The present case is a still worst to the extent



that it is a case of no evidence. Therefore, the petitioner has made out a case so as to interfere with the impugned order of dismissal dated 02.08.2012 and it is set aside. The concerned Appointing Authority/Disciplinary Authority is hereby directed to regulate the intervening period towards service and monetary benefits and the same shall be calculated and disbursed in favour of the petitioner within a period of four months from the date of receipt of this order.

8. At this stage, it is noticed that if petitioner had in service he would have attained age of superannuation retired from service on 30.11.2015. Therefore, the concerned authority is also required to re-fix the petitioner's pension and difference of pension shall be calculated and disbursed in accordance with law. If petitioner is not entitle in that event a detailed speaking order shall be passed and communicate to the petitioner within the aforesaid period. The concerned authority is directed to examine Bihar Pension Rules.

(P. B. Bajanthri, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.10.2023
Transmission Date	NA

