

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1032 of 2018

In
Civil Writ Jurisdiction Case No.8499 of 2013

=====

Sanju Sinha, wife of Late Krishto Singh, Resident of Village Belchhi, P.O. Bali Belchhi, P.S. Chandi, District- Nalanda.

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Panchayati Raj Department, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Patna Division, Patna.
3. The District Magistrate, Nalanda.
4. The District Panchayati Raj Officer, Nalanda.
5. The Deputy Collector, Land Reform, Rajgir, Nalanda.
6. The Sub Divisional Officer-cum- Enquiry Officer, Rajgir, Nalanda.
7. The Block Development Officer, Silaw, Nalanda.
8. The Block Development Officer, Nagarnausa, Nalanda.
9. The Block Development Officer-cum- Conducting Officer, Ben, Nalanda.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Binod Kumar Paswan, Advocate
For the Respondent/s :

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 31-10-2023

The widow of an employee, who was dismissed from service is in appeal. The judgment impugned in the appeal, rejected the contentions raised against the dismissal order which was affirmed in Service Appeal No.180 of 2011. The orders challenged in the writ petition, filed originally by the employee; who was substituted after his death on 24.12.2014 with his widow, were the orders dated 21.09.2011 passed by the District



Magistrate, Nalanda and that passed in Service Appeal dated 29.01.2013.

2. Before the Writ Court, the contention raised against the order passed by the District Magistrate, Nalanda was that the entire proceedings were conducted *ex parte* which in effect declined a proper opportunity to defend the allegations raised against the employee. The allegation of violation of principles of natural justice was on the ground of there being no proper notice in respect of the proceedings. Annexure-7 dated 16.08.2011 was specifically relied on to contend that the date of the proceedings, which was absent in the said notice, was never communicated to the employee.

3. The learned Single Judge directed the record of the proceedings to be produced before Court. Having perused the records, it was found that the employee was posted to a particular place on 26.07.2003 wherein he joined only after one month and then later abandoned his employment by remaining continuously absent. Admittedly, the employee was not paid any remuneration after 2003. In 2010, he filed a writ petition bearing CWJC No.6839 of 2010 seeking a direction for payment of salary, arrears arising out of pay revision since April, 1997 and subsistence allowance during the period he was kept under



suspension on an earlier occasion. By order dated 13.01.2011, the writ petition was disposed of directing a representation to be placed before the District Magistrate, Nalanda, which was directed to be considered after holding an enquiry into the entitlement of the employee and release the admitted dues to the employee.

4. Pursuant to the directions, an enquiry was conducted and an order was passed on 26.03.2011. Simultaneously, it was also found that the employee was absent for the entire period from August, 2003; for a period of 7 years, 6 months and 27 days in which period no salary was paid to the petitioner. With respect to the earlier period, in compliance with the directions in the judgment in CWJC No.6839 of 2010, Rs.75584/- was found due and admissible to the employee. While admitting the dues of the employee, it was also decided that Rule 76 of the Bihar Service Code would be invoked to proceed against the misconduct of the employee for his unauthorized absence for a long period.

5. The District Collector pursuant to the enquiry directed by this Court itself had found that the employee is on unauthorized absence extending over a very long period of more than seven years. It was in pursuance of that enquiry that the



petitioner's arrears of salary was also found admissible for an earlier period. The employee was aware of the admitted arrears found by the District Collector as also the subsequent enquiry initiated for an unauthorized absence.

6. A charge memo dated 02.04.2011 was issued specifically alleging misconduct of continuance on unauthorized absence from 25.08.2003. The charge memo dated 02.04.2011 produced as Annexure-4 was the enquiry initiated against the employee for his unauthorized absence.

7. The learned Single Judge after looking into the records found that the charge memo dated 02.04.2011 was communicated to the delinquent employee on 06.04.2011 and a second notice was issued on 21.04.2011 which also was served on the delinquent employee which communicated the date of 28.04.2011. On 28.04.2011, a third notice was decided to be issued which was issued by memo no.1563 dated 13.05.2011. The delinquent employee despite all these notices refused to participate in the enquiry proceedings. In such circumstances, the delinquent employee cannot raise a contention that there was violation of principles of natural justice and that he was not afforded a proper opportunity to defend himself. The delinquent employee had failed to respond to the various notices issued to



him.

8. On the basis of the enquiry report dated 21.06.2011, the charge of unauthorized absence from 25.08.2003 was held to have been proved. The disciplinary authority issued a second show cause notice to the delinquent employee on 24.06.2011 enclosing the copy of the enquiry report and other documents; the receipt of which is stoutly denied and disputed by the delinquent employee. The learned Single Judge noticed the said assertion, but rejected it since after submission of the enquiry report, the service of the second show cause notice was apparent from the record of the proceedings. A reminder was also issued to the delinquent employee which was dated 16.08.2011, in which the date communicated was 28.08.2011; which was clearly evident from the records.

9. The learned counsel for the appellant submitted that the notice was only acknowledged by the son of the delinquent employee. However, we see that the learned Single Judge had found that the notice was accepted by the wife of the writ petitioner, who was substituted as the petitioner in the writ petition itself. The learned Single Judge also found that it was relevant that a person who accepted the notice is the substituted petitioner, who is now claiming the benefits due to the



dismissed employee; the legally wedded wife of the employee.

10. On a reference to the records of the enquiry, it was found that there was sufficient notice issued regarding the charges alleged and the enquiry initiated which was not responded to by the delinquent employee. After the submission of the enquiry report, the disciplinary authority had also served the enquiry report on the delinquent employee and sought for his explanation after which the penalty was imposed. The imposition of penalty of dismissal was also challenged in a Service Appeal which was considered by the appellate authority, who is the Commissioner, Patna Division, Patna. The appeal was rejected by a reasoned order dated 29.01.2013.

11. We are of the opinion that the learned Single Judge was perfectly right in having dismissed the writ petition, especially since this Court sitting in judicial review, under Article 226 of the Constitution of India, is not competent to enter into a re-appreciation of facts, regarding the misconduct alleged or even consider the justification of the penalty imposed; if there is a semblance of evidence regarding the misconduct alleged. In the present case, the appellate authority has also affirmed the order of penalty after re-appreciation of the facts. The only ground raised by the delinquent employee



was of violation of principles of natural justice, which was hinged on the contention that no proper notice was given to him. The learned Single Judge had taken the effort to peruse the records, which was produced before Court, to find that the contention taken of the proceedings having not been properly informed to the delinquent employee was incorrect. The punishment imposed of dismissal for continued unauthorized absence for more than seven years cannot be held to be disproportionate.

12. We find absolutely no reason to interfere with the findings of the learned Single Judge and hence there is no scope for interference to the penalty imposed which stood confirmed in a statutory appeal.

13. We dismiss the appeal leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Sunil/-

AFR/NAFR	
CAV DATE	
Uploading Date	04.11.2023
Transmission Date	

