

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1799 of 2018

In
Civil Writ Jurisdiction Case No.4701 of 2017

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1. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
 2. The Director-in-Chief, Health Services, Govt. of Bihar, Patna.
 3. The District Magistrate, Aurangabad.
 4. The Civil Surgeon, Aurangabad.
 5. The Additional Chief Medical Officer, Aurangabad-cum-Enquiry Officer, Aurangabad.
 6. The District Officer, Aurangabad.
 7. The Incharge Medical Officer, Primary Health Centre, Daudnagar, District-Aurangabad.

... .. Appellant/s

Versus

Basant Prasad Singh, Son of Late Munsii Mahto, Resident of Hospital Colony,
Pos Office-Aurangabad, Police Station-Aurangabad, District-Aurangabad.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Niraj Kumar, AC to GA-10
For the Respondent/s	:	Mr. Sunil Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-07-2023

The appeal is by the State against the impugned judgment which set aside an order of punishment passed by the Director-in-Chief (Administration), Health Services, Bihar. The impugned order in the writ petition directed forfeiture of 100% pension of the petitioner for life.

2. The petitioner, who is the first respondent herein,



was posted as a Head Clerk in the office of Civil Surgeon-cum-Chief Medical Officer, Aurangabad. He was alleged to have been caught by the flying squad of the District Anti-Corruption Team, Aurangabad on 10.06.2007 with a sum of Rs. 5,000/- alleged to be bribe received from one Auxiliary Nurse and Midwife (for brevity, ANM), in order to facilitate her transfer. A criminal case was also registered as Aurangabad P.S. Case No. 131 of 2007. The petitioner was taken into custody and a charge-sheet dated 03.07.2007 was served on the petitioner. Simultaneously, an Inquiry Officer was appointed and after the reply of the petitioner, the Inquiry Officer submitted his inquiry report, based on which the impugned order was passed. While the inquiry report was submitted on 13.02.2014 and the impugned order was passed on 16.02.2017; in the midst of it the petitioner retired on 28.02.2014.

3. The learned Single Judge found that there was absolutely no evidence led before the Inquiry Officer and there was no material available to find the appellant guilty of the defalcation alleged.

4. The learned Single Judge also referred to the decision of the Hon'ble Supreme Court in **Roop Singh Negi v. Punjab National Bank** reported in (2009) 2 SCC 570.



5. The learned counsel for the State pointed out that the learned Single Judge failed to look into the evidence of the complainant, who was examined before the Inquiry Officer. It is also stated that there is no specific denial made by the petitioner in his reply before the Inquiry Officer. The learned counsel appearing for the 1st respondent herein seeks to sustain the order of the learned Single Judge.

6. We have inquired from the learned counsel for the 1st respondent about the fate of the criminal case; which, it is submitted, is still pending before the jurisdictional criminal Court. The learned Single Judge has found that none of the witnesses were examined before the Inquiry Officer which is not denied by the State. Even before us the only submission by the learned Government Advocate is that the complainant was examined, who spoke about the bribe accepted by the respondent and the reason for such bribe being demanded and given.

7. We cannot but notice that especially in trap cases there should be a better standard of proof ensured in the disciplinary inquiry conducted.

8. We are not for a moment forgetting the principle that the departmental inquiry and the criminal proceedings are



distinct and separate. While in a criminal case, conviction depends upon the proof offered beyond reasonable doubt; in a departmental action it is the preponderance of probability that weighs with the authorities. The complainant and the 1st respondent were working in the same department and it is possible that there existed a grudge between them, especially when, admittedly, the respondent was in the administrative wing which handles the transfer of nurses. The mere examination of the complainant, according to us, would not suffice, in the given circumstances. In trap cases especially, the officers are those working in the government itself and there would be no difficulty in procuring their presence before the Inquiry Officer.

9. The respondent all through had denied the instance of accepting a bribe and the argument to the contrary cannot be countenanced. We are also fortified by the judgment of **Roop Singh Negi v. Punjab National Bank**(supra) wherein it was noticed that the criminal Court had on the self same evidence discharged the accused; while the Inquiry Officer relied upon the confession made. True, in the present case the criminal case has not ended as yet but the dictum that persuades us to find in favour of the respondent is the declaration that “a decision must be arrived at on some evidence, which is legally



admissible”. The evidence of the complainant, though admissible to an extent, is an interested evidence, which has to be substantiated by some other evidence which was available, but the government failed to produce before the Inquiry Officer.

10. We, hence, find no reason to interfere with the judgment of the learned Single Judge which declared the impugned order to be resting on no evidence and the action of the disciplinary authority to be a mechanical one.

11. We dismiss the appeal, without any order on cost.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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