IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5595 of 2019

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Ajay Kumar Thakur, Son of Late Devendra Nath Thakur, Resident of Village Thakur Gangati, District- Godda (Jharkhand), at present residing at Flat No. 75, Block No. 06, Arya Kumar Road, Rajendra Nagar, Dinkar Golamber, P.S. Kadamkuan, Town and District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Finance Dept, Patna.
2. The Divisional Commissioner cum Appellate Authority Gandhi Maidan, Patna.
3. The District Magistrate Patna.
4. The Additional Collector cum Departmental Enquiring Officer Patna.
5. The Treasury Officer Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Akhilesh Dutta Verma, Advocate
For the Respondent/s : Mr.Anil Kumar Singh (GP 26)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 09-07-2024

<u>Re. Interlocutory Application No. 1of 2021.</u>

Learned counsel for the petitioner submits that Interlocutory Application No. 1 of 2021 has been filed for a direction to the respondent for making payment of retiral dues as during pendency of the present writ petition, the petitioner was superannuated on 31.07.2021 and, therefore, the present Interlocutory Application has been filed to amend the prayer in the writ petition for grant of payment of post retiral dues including Group Insurance, Leave Encashment, Gratuity, Provident Fund and Regularization of Pension month to month.

2. Learned counsel for the State submits that a counter affidavit of Interlocutory Application No. 1 of 2021 has been filed in which the stand has been taken that the petitioner was dismissed from service vide letter No. 642, dated 17.02.2024 passed by the disciplinary authority (the District Magistrate, Patna) and his punishment was approved by the appellate authority also. Learned counsel for the State further submits that at present, the petitioner is not entitled to any relief of retiral dues. Till his dismissal shall not be set aside, he is not entitled to such prayer in the present writ petition.

3. In the light of the submissions made by the parties, it transpires to this Court that at present, the petitioner's dismissal from service has already been made which has been approved in appeal and as such, the demand of post-retiral dues by the petitioner appears to be premature. Hence, at this juncture, the prayer for the amendment cannot be made.

4. Accordingly, Interlocutory Application No. 1 of 2021 is hereby rejected with liberty that in case, the present writ petition shall be allowed on merit, the petitioner may renew his prayer before the appropriate forum, if so advised.

Re. CWJC No. 5595 of 2019.

5. Vide order dated 30.04.2024, learned counsel for

the petitioner and learned counsel for the State have concluded their argument and a direction was made to them to file their respective written argument along with supportive judgments. The written argument has been filed on behalf of the petitioner but no written argument has been filed by the State till date. In this background, it is not proper for this Court to keep the case pending further, hence, judgement is being passed on the merit of the case.

6. The present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 12.06.2018 passed in Service Appeal No. 116 of 2015 passed by the Appellate Authority (Respondent No.2, the Divisional Commissioner, Patna), as contained in Annexure -13 and also for quashing of order dated 17.02.2014 passed by the disciplinary authority (Respondent No. 3, the District Magistrate, Patna), vide Memo No. 462, as contained in Annexure -10 whereby the petitioner has been dismissed from service on the basis of a finding of departmental enquiry.

7. Learned counsel for the petitioner submits that the petitioner was appointed as Assistant Accountant in the Bihar State Food and Civil Supplies Corporation, Patna. He joined the service on 29th July 1986 at the Head Office at Patna.

Thereafter, the petitioner joined in September 1996 as Treasury Officer, Buxar on deputation basis and transferred to Secretariat Treasury Sichai Bhawan, Patna in January 2000. He subsequently, transferred to Barh Sub Treasury, Patna, and ultimately, his cadre was absorbed in Collectorate Cadre Patna on 08.03.2006 and in November 2009, he was transferred to the Collectorate Treasury Patna from Barh Sub-Treasury. Learned counsel further submits that during his posting at Patna Collectorate Treasury, he was made a victim in a trap case. As a result, a Vigilance P.S. Case No. 27/2011 was lodged and the petitioner was taken into custody on 06.05.2011. During his judicial custody in the said case, he was put under suspension vide order dated 02.06.2011 with effect from 06.05.2011. He was further granted bail in the said vigilance case and released from custody on 07.07.2021. Thereafter, the petitioner submitted his joining before the Treasury Officer on 15.07.2011. His joining was accepted by the office and vide memo No. 3094 dated 14.10.2011, his suspension was revoked with effect from 15.07.2011, but he was further suspended under Rule 9 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the CCA Rules, 2005) due to pendency of the Vigilance Case and the headquarter was fixed at Sub-Divisional Office, Barh.

8. Learned counsel for the petitioner further submits that subsequently the petitioner was served with a departmental chargesheet dated 24.10.2011 by the Treasury Officer in the form of Prapatra -'k' but in the said chargesheet, it is mentioned that no document relating to evidence are available in the office rather, it was mentioned that all evidence relating to charge is with department of vigilance Bihar, Patna. The petitioner has been served with another chargesheet on 14.12.2011 in the form of Prapatra "Ka" by the office of Collector, Patna. In the said charge memo, a departmental enquiry was directed to be initiated and the Additional Collector was appointed as Enquiry Officer while the Treasury Officer, Patna was appointed as Presenting Officer and the petitioner was directed to file his show cause.

9. Learned counsel further submits that in compliance with the charge-memo, the petitioner filed his application on 06.01.2012 for the supply of all the relevant documents. Thereafter, the Enquiry Officer directed the Presenting Officer to supply relevant documents, as requested by the delinquent employee. In response thereof, only a copy of F.I.R. of Vigilance Case was provided to the petitioner. Learned counsel

for the petitioner further submits that the petitioner was forced /compelled to file his show cause and he filed his reply on 05.02.2013, denying all the allegations levelled against him. Learned counsel further submits that the Enquiry Officer has mechanically followed the F.I.R. and came to the conclusion that the petitioner is guilty of charge levelled against him. He further submits that no procedure as provided under 17 of the CCA Rules, 2005 has been followed. There is a gross violation of the CCA Rules, 2005 in as much as no evidence has been adduced on behalf of the department, in support of the allegations. None of the witnesses, such as the complainant, the trap team leader, or the investigating officer, were examined as a witness to prove the Vigilance document. The petitioner was also not provided any opportunity to examine the defense witness and the Enquiry Officer came to the conclusion that the petitioner was guilty of the alleged charge only on the basis of Vigilance paper, in mechanical manner.

10. Learned counsel further submits that the petitioner was served with a second show cause notice, by the disciplinary authority on 30.01.2014. The petitioner replied the same on 13.02.2014, denying all the allegations and the opinion expressed by the enquiry Officer. The disciplinary authority has

not considered any grounds mentioned in the second show cause and passed the final order in departmental proceeding vide order dated 17.02.2014 issued vide memo no. 642 affirming the recommendation made by the enquiry officer and passed an order imposing major punishment of dismissal from service. Thereafter, the petitioner approached the appellate authority-cum-the Divisional Commissioner in Service Appeal No. 116/2015, but in the service appeal, the final order was passed on 12.06.2018 without giving any opportunity of hearing to the petitioner and without applying his mind on the points taken in Memo of appeal and in a mechanical manner, it was rejected. By the said order passed in appeal, the punishment order made by the disciplinary authority has been affirmed. Thereafter, the petitioner has preferred the present writ petition.

11. Learned counsel for the petitioner raised the point that on 24.10.2011, the Treasury Officer issued a departmental chargesheet which is beyond his jurisdiction as the Treasury Officer, Patna is neither the appointing authority nor the dismissing authority. Hence, any action taken on the basis of the said charge memo dated 24.10.2011 is non-jurisdictional. He further submits that the petitioner was served with another departmental chargesheet in the form of 'Prapatra -'Ka' by the

Collectorate, Patna on 14.12.2011 which has been issued in gross violation of Rule 17 of the CCA Rules, 2005. Learned counsel further submits that the enquiry officer in conducting the departmental proceeding has again violated rule 17 and sub-rules 14, 15, 16, 17 and 18 of Rule 17 of the CCA Rules, 2005. According to him, the charges levelled against the delinquent must be proved by oral evidence before the Enquiry Officer. But no witnesses were examined before the Enquiry Officer nor the charge levelled against the petitioner has been proved nor there is any document given to the petitioner in support of the charge levelled against him in the departmental chargesheet. According to him, the action of the respondent is arbitrary, illegal and unconstitutional, as there is a gross violation of Rules 17(4), 17(5) and 17(11) of the CCA Rules, 2005 which prescribes that documents and evidences must be given to the delinquent employee in departmental proceeding to prove the departmental charge levelled against the petitioner, in the charge memo.

12. Learned counsel further submits that a second show cause notice has been served, on which the petitioner has made a response, but his reply and second show cause have not been considered at all and major punishment has been imposed against the petitioner by way of dismissing him from service.

Learned counsel further submits that the appellate authority has also passed the order in a complete mechanical manner and without consideration of a single point raised in the memo of appeal. He further submits that he relied on a judgment rendered in the case of Yogendra Kumar Singh Vs. the State of Bihar and Others decided by this Court vide order dated 17.01.2023 in CWJC No. 14895 of 2021. He further relied on a judgement rendered in the case of Birendra Kumar Vs. The State of Bihar and Ors. decided on 25.10.2021 in CWJC No. 5376 of 2017; Sharda Nand Prasad Vs. the State of Bihar and Others decided on 30.06.2022 in CWJC No. 18739 of 2015; The State of Bihar and Ors. Vs. Naresh Prasad Sinha decided on 17.03.2023 in L.P.A. No. 201/2022; The State of Bihar and Ors. Vs. Vijendra Prasad decided on 12.01.2023 in LPA No. 72 of 2020; in the case of Shankar Dayal Vs. the State of Bihar and Ors. decided on 29.06.2017 in CWJC No. 7207 of 2016 and in the case of Sandeep Kumar Vs. GB Pant Institute of Engineering and Technology Ghurdauri and Ors. **decided on 16.04.2024 in SLP (C) No(s). 8788-8789 of 2023**. Learned counsel further submits that the decision made by the disciplinary authority is in gross violation of the CCA Rules, 2005 in which the procedure laid down by the law has completely been ignored. He further submits that not only the original authority as well as the appellate authority has also not considered a single point which has been mentioned in the memo of appeal. As such, both orders are fit to be set aside.

13. Learned counsel for the State submits that the present writ petition has been filed for setting aside the order passed by the original authority as well as the appellate authority. Learned counsel submits that the entire departmental proceeding has been initiated and based on the charge memo issued by the Collector dated 14.12.2011 who is the competent authority. Therefore, there is no jurisdictional error. Learned counsel submits that in the charge memo signed by the Treasury Officer, no action has been taken, therefore, this point is not available to the petitioner. Learned counsel further submits that a charge memo has been issued by the Collector who is the competent authority by which the conducting officer has been appointed and the presenting officer has also been appointed. Counsel for the State submits that in the departmental proceeding, the documents were demanded by the petitioner on the basis of charge which has to be proved. All those documents have been provided to him and then only the proceeding has been initiated. Counsel submits that due opportunity i.e. show

cause, participation in the disciplinary proceeding, and second show cause were provided to him, thus, the principle of natural justice has duly been followed. The disciplinary authority has found all the charges proved against the petitioner on the basis of which the disciplinary authority has taken action after providing a second showcase. There is no violation of any law. Learned counsel further submits that in the disciplinary proceeding, the High Court is not the Court of Appeal. In support of his argument, he relied on a judgement Punjab National Bank Vs. M.L. Kalra (D) THR. LRS & Anr. reported in 2023 Live Law (SC) 733 wherein the Hon'ble Apex Court has held that the power of judicial review for the Courts in disciplinary action is circumscribed. The Court can only correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and the power exercised is not akin to adjudication of the case on merits as an appellate authority.

14. This Court feels it necessary to quote the operative portion of the appellate order dated 12.06.2018 passed in Service Appeal No. 116/2015 by the Divisional Commissioner, Patna, as under :-

> “इनके विरूद्ध नियमानुसार विभागीय कार्यवाही संचालित की गई जिसमें अपीलार्थी को अपना पक्ष रखने का पर्याप्त

> मौका दिया गया । विभागीय कार्यवाही में आरोप प्रमाणित पाये जाने पर समाहर्त्ता, पटना दवारा उन्हे बर्खास्तगी का दंड अधिरोपित किया गया जो नियमानुकूल है । अतः समाहर्त्ता पटना के उक्त आदेश में किसी हस्तक्षेप की आवश्यकता नहीं है ।”

15. After hearing the parties and upon going through the written argument filed by the counsel for the petitioner which is on record, particularly, the appellate order dated 12.06.2018 quoted above in which only two lines of reasoning have been assigned by the appellate authority, it transpires to this Court that the writ petitioner has raised series of points in his memo of appeal on facts as well as on law but the appellate authority has not considered either the factual matrix of this case or the judgements on which he relied particularly those rules of law and judgements which are mentioned in memo of appeal.

16. This Court is fully conscious that this Court in the judicial review has not exercised the power of being an appellate authority. Still, this Court is conscious that the appellate authority being the Court of Appeal ought to have considered the facts and law both. It is due to this reason, the order dated 12.06.2018 passed by the appellate authority-cum-the Divisional Commissioner, Patna in Service Appeal No. 116/2015 is hereby set aside and it is directed to the Appellate Authority -cum-the Divisional Commissioner to pass a reasoned and speaking order within 90 days from the date of production

of a copy of this order before him after considering all those points which the petitioner has raised in the memo of appeal and in writ petition also and considering those judgements which have been relied upon here in writ.

17. Accordingly, the writ petition is allowed in the light of the direction made above.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	10/07/2024
Transmission Date	NA