

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7088 of 2016

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Vijay Kumar Son of Sri Ram Murat Singh, resident of village- Moka, P.O.-
Agar, P.S.- Agar Sasaram, District- Rohtas, posted as Assistant, Civil
Court, Khagaria

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The High Court of Judicature at Patna, through Registrar General
3. The Registrar General, the High Court of Judicature at Patna
4. The Registrar Administration In-charge, the High Court of Judicature at Patna
5. The District and Sessions Judge, Khagaria, Disciplinary Authority, At and P.O. and P.S.- Khagaria,
6. The learned 1st Additional District and Sessions Judge, Khagaria 1st Inquiry Officer, At and P.O. a
7. The learned IIIrd Ad-hoc Additional District and Sessions Judge, Khagaria 2nd Inquiry Officer, At
8. The Registrar, Civil Court of Khagaria, At and P.O. and P.S.- Khagaria, District- Khagaria

... .. Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Mahesh Narayan Parbat, Sr. Adv. : Mr. Praveen Prabhakar, Adv. : Mr. Sanjay Kumar Jha, Adv.
For the Patna High Court	: Mr. Satyabir Bharti, Adv. : Mss. Kanupriya, Adv. : Mr. Abhishek Anand, Adv.
For the State	: Mr. Kameshwar Kumar, GP-17 : Mr. Arbind Kumar, A.C. to GP-17

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 16-01-2024 Heard, Mr. Maehs Narayan Parbat, learned senior

counsel appearing for the petitioner and Mr. Satyabir Bharti,

learned counsel appearing for the Patna High Court, Patna.

1. The present writ application has been filed for
following reliefs;



“(a) To issue a writ of certiorari for quashing the office order as contained in memo No. 1407 dated 07.04.2014 (Annexure-15) passed by the learned District & Session Judge, Khagaria as Disciplinary Authority, through which the departmental proceeding initiated against the petitioner has been concluded dehors the rules, in wholly illegal and arbitrary manner without following the procedure of departmental proceeding properly and in complete violation of principle of natural justice also and he has been awarded punishment of withholding of two increments for ever and also warning to correct himself, not to do such acts in future, otherwise major punishment would be imposed against him and further he has not been found eligible for grant of any amount, including subsistence allowance for suspension period. A further direction has been also issued by the learned Disciplinary Authority to incorporate such remarks in the C.R. of the petitioner.

(b) To issue a further writ of certiorari for quashing the office order as contained in letter No. 53361/Admin. Misc. File No. IV-77-2014 dated 18.09.2015 (Annexure-16) passed by the learned Appellate Authority, through which the appeal filed by the petitioner against said order of punishment has been dismissed by a non speaking order, dehors the rules and illegal and arbitrary manner.

(c) To issue a further writ of certiorari for quashing the 2nd enquiry report dated 13.03.2014 (Annexure-13) submitted by learned Ad-hoc Additional District & Sessions Judge-III, Khagaria, holding it illegal and without jurisdiction.

(d) To issue a writ of mandamus commanding the respondents to discharge the petitioner from the charges leveled against him, which are based on non existent grounds.

(c) To issue a further writ of mandamus,



commanding the respondents to pay the subsistence allowances and salaries of petitioner for the period of his suspension, which have been withheld by them in arbitrary manner.”

2. The brief facts of the present writ application fallen for consideration is that while the petitioner was posted as Bench Clerk in the office of learend Additional District and Session Judge, V, Fast Track Court, Khagaria between the period 06.02.2012 to 21.02.2012, he was suspended by the learned District & Session Jude, Khagaria vide his order No. 72(Misc.)/2012 contained in his Memo NO. 746 dated 21.02.2012 on the basis of certain allegations made by the learned Additional District and Session Judge, IV, Fast Track Court, Khagaria and he was asked to file his show cause with regard to allegation made in letter No. 9 dated 18.02.2012 within seven days with stipulation as to why a departmental proceeding may not be initiated against him. Pursuant to the aforesaid, the petitioner has field show cause on 24.02.2012 denying the allegations and explaining the circumstance in which the said allegations were leveled against him. After submission of show cause dated 24.02.2012, the same was duly considered by the respondent No.5 who after considering the same pleased to reject the same and framed eleven charges against the



petitioner regarding dereliction of duty, insubordination and in disciplinary act and initiated departmental proceeding against the petitioner vide Order No. 96(Misc.)/2012 as contained in Memo No. 872 dated 29.02.2012 and one Sri Abhay Kanth Jha, learned Additiona District and Sessions Judge,1st Khagaria was appointed as Inquiry Officer to conduct the inquiry and learned Judge In-charge (Administration) was appointed as Presenting Officer. Thereafter the petitioner received a show cause notice dated 20.07.2012 issued by the inquiry officer and in compliance thereof, the petitioner has submitted his detailed show cause/written statement on 08.08.2012 denying the allegations as alleged in the memo of charge. After conclusion of inquiry, the inquiry officer submitted its report on 25.01.2014 exonerating the petitioner from all charges except charge No.8 which stands proved against the petitioner, however, the said report was not accepted by the disciplinary authority ie. District and Sessions Judge, Khagaria who differing with the report of the inquiry officer, was pleased to appoint another inquiry officer vide Order No. 47 (Misc.)/2014 as contained in memo No. 472 dated 30.01.2014 with a direction to submit his inquiry report



after considering evidences available on record afresh and providing opportunity of hearing to the parties. Thereafter, the newly appointed inquiry officer after conducting the inquiry submitted its report with a conclusion that charge Nos. 1, 3, 4, 5, 7, 8, 9, 10 and 11 were proved against the petitioner and thereupon on the basis of second inquiry report, the petitioner was awarded punishment of withholding of two increments forever vide office Order No. 124 (Misc.)/ 2014 as contained in Memo No. 1407 dated 04.07.2014. Being aggrieved by the order of punishment, the petitionenr filed an appeal before the learned Registrar (administration) who vide Memo No. 2724 dated 24.09.2015 communicated to the petitioner that his appeal has been rejected.

3. Learned senior counsel appearing for the petitioner submits that once the inquiry officer has submitted his inquiry report after considering the evidences collected during the inquiry, the disciplinary authority while deferring with the inquiry officer's report and remanding the matter has no jurisdiction to appoint another inquiry officer in the midst of the departmental proceeding. He further contends that Rule 18(1) of Bihar civil Services



(Classification, Control & Appeal) Rules, 2005 empowers the disciplinary authority either to accept the inquiry report submitted by the Inquiry Officer or for the reasons recorded in writing to remit the matter to the inquiry officer for further inquiry but here in the case at hands the disciplinary authority has exceeded his jurisdiction and erroneously appointed another inquiry officer deferring with the report of first inquiry officer, which is against the mandatory provisions of Rule 18(1) of the Bihar Civil Services (Classification, Control & Appeal) Rules, 2005. He further contends that although the petitioner has participated in the subsequent inquiry proceeding but it does not construe as in accordance with the law. Therefore, the order of punishment passed by the disciplinary authority is wholly illegal and arbitrary and *dehorse* the rules and it does not sustain in the eye of law, hence it deserves to be quashed.

4. On the other hand, learned counsel appearing for the High Court contends that the District and Sessions Judge has right to take disciplinary action against such employees who has been booked for the charge of misconduct, dereliction of duty, disobedience and indiscipline in accordance to Rule 19 of the Bihar Civil Court



Staff (Class III and IV) Rules, 2009. So far as first inquiry report dated 25.01.2014 is concerned, it was against the exhibited documentary evidences as well as against the relevant depositions of witnesses and also against the facts in issues and charges and that too the same report was submitted after a prolonged period reasons best known to the first inquiry officer. Therefore, the disciplinary authority after considering the materials viz. exhibited documentary evidences as well as relevant depositions has found the first inquiry report not satisfactory and appointed another inquiry officer for fair adjudication of the case in exercise of powers vested to him. He further contends that if the petitioner was aggrieved by the appointment of another inquiry officer, he ought to have challenged the order by which the second inquiry officer had been appointed at the relevant stage itself but instead doing so, he voluntarily participated in the subsequent inquiry. Even in the departmental proceeding, he has not taken such stand that he was aggrieved by the appointment of another inquiry officer. He further contends that the respondent No.5 being satisfied with the inquiry report dated 13.03.2014 being it on relevant evidences on record, has passed the order No.



124(Misc.) 2014 dated 07.04.2014 in accordance with the law and the same has already been affirmed by the appellate authority and, therefore, it does not suffer from any infirmity warranting interference of this Court.

5. Learned counsel for the High Court has drawn the attention of this Court towards the fact that the petitioner even has not chosen to challenge the Order No. 47/(Misc.) 2014 dated 30th January, 2014 by which another inquiry officer has been appointed by the disciplinary authority, in the present writ application even though the case of the petitioner is based on the said order.

6. I have heard the rival contention of the parties and perused the materials available on record.

7. The sole contention raised on behalf of the petitioner in his defense is that the disciplinary authority ought not to have appointed the another inquiry officer even if he was not satisfied with the inquiry officer's report rather he should have remanded the matter to the same inquiry officer's for initiation of fresh inquiry after assigning reasons in writing and the same is in violation of 18(1) of the Bihar Civil Services (Classification, Control & Appeal) Rules, 2005. Here in the case at hands, it is not in dispute that another



inquiry officer has been appointed after deferring with the report of the previous inquiry officer by the disciplinary authority finding it not satisfactory as being not based on facts and evidences collected during the inquiry. Simultaneously, it is also not in dispute that the petitioner has voluntarily chosen to participate in the inquiry proceeding and when he has been found guilty for the alleged charges after the conclusion of inquiry and punishment order has been passed against the petitioner, he is agitating the issue of appointment of the another inquiry officer and on the sole ground punishment order is being sought to be set aside despite the fact that he had participated in the departmental inquiry and at no point of time earlier he challenged the departmental inquiry. It is pertinent to mention here that if the petitioner was aggrieved by the appointment of another inquiry officer, he should have questioned the validity of the order of appointment of another inquiry officer at the relevant stage or he should have protested not to participate in the fresh inquiry proceeding.

8. In such view of the matter, this Court would observe that once having participated in the departmental



inquiry on remand by the disciplinary authority and having not challenged the earlier decision of the disciplinary authority in remanding the matter of change of Inquiry Officer at appropriate stage and thereafter having fully participated in the departmental inquiry and when the decision has gone against the petitioner, thereafter it would not be open for the petitioner always to challenge the order passed by the Disciplinary Authority remanding the matter so as to enable the department to prove the case against the delinquent and change of inquiry officer. Therefore, this contention of the petitioner fails in the facts and circumstances of the case and the order of disciplinary authority does not warrant interference of this Court.

9. Accordingly, this writ application is dismissed.

(Rajesh Kumar Verma, J)

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