

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6456 of 2016

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Akhileshwar Ram S/o Late Dinesh Ram, R/o Village- Bharuli, P.S.- Aander,
District- Siwan, presently S.I. (suspended), P.S.- Saur Bazar, Distt- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Home Police Department, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Koshi Zone, Darbhanga.
5. The Deputy Inspector General of Police, Koshi Range, Saharsa.
6. The Superintendent of Police, Saharsa.
7. The Deputy S.P.-cum-Conducting Officer of Saharsa Departmental Proceeding No. 16/14.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Giri, Advocate
For the Respondent/s : Mr. Satya Vrat, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 06-02-2024 Heard Mr. Sanjay Kumar Giri, the learned counsel

for the petitioner and Mr. Satya Vrat, the AC to GP-10.

2. The present writ petition has been filed for quashing the order dated 18.12.2015 (Annexure-3), order dated 22.02.2016 (Annexure-5) and order dated 10.03.2016 (Annexure-6) of the writ petition.

3. Learned counsel for the petitioner submits that in the year 2015, when the petitioner was posted as Sub-Inspector, he has been inflicted in the departmental proceeding and apart from that, an FIR has also been instituted against the petitioner.

He further submits that a departmental proceeding was initiated against the petitioner vide order dated 18.12.2015, but bare perusal of the order dated 18.12.2015, it appears that in the present case no Presenting Officer was appointed by the authority concerned and only Conducting Officer was appointed for the same. Learned counsel for the petitioner has relied upon an unreported judgment dated 22.09.2021 passed in CWJC No. 17527 of 2019 in the case of ***Sonu Kumar Vs. The State of Bihar & Ors.*** and para no. 17 of the said judgment is read as follows:

“There is yet another aspect of the matter. It does not appear from the enquiry report that the Presenting Officer performed any role by presenting the case of the department before the Inquiring Authority. It appears from the report of the Inquiring Authority that he himself asked the witnesses to depose in the departmental enquiry. It seems that he himself assumed the role of the Presenting Officer also. The enquiry report does not depict any participation of the Presenting Officer though a Presenting Officer was appointed. It is curious to note that in the charge memo itself

the main functions of the Presenting Officer had been mentioned. The enquiry report does not show whether the Presenting Officer discharged any of his duties as mentioned in the order whereby the Presenting Officer was appointed. The impugned decision of the Disciplinary Authority, which is based on findings of the Inquiring Authority, without any evidence and a perfunctory departmental enquiry, in the Court's opinion, is wholly unjust, illegal, arbitrary and unsustainable.”

and he has also relied upon the judgment dated 05.09.2023 passed in LPA No. 507 of 2017 in the case of ***Upendra Pandit Vs. The State of Bihar & Ors.*** reported in **2023(4), PLJR** and para no. 11 of the said judgment is read as follows:

“In the opinion of the Court, Rule 17(3) and (4) of the Rules of 2005 are very clear when they provide that where it is proposed to hold an inquiry against the Government servant under the said Rules, the disciplinary authority shall draw up or cause to be drawn up the substance of the imputation of misconduct or misbehavior in support of each

article of charge, the same shall contain a statement of relevant facts, list of documents and list of witnesses by which the articles of charges are proposed to be sustained. Thus, non-supply of the list of documents and the list of witnesses to the appellant in the instant case on which the disciplinary authority proposed to sustain the charges levelled against the appellant in the disciplinary proceeding as also the proceeding being conducted without appointment of a Presenting Officer was a clear and serious lapse of the provisions of Rule 17 of the Act (sio- Rules?) of 2005. The requirement of Rule 17(3) and (4) not having been fulfilled, the order of punishment of dismissal from service of the appellant cannot be sustained. Both the orders of dismissal dated 29.12.2005 and the order dated 30.04.2008 rejecting the appeal preferred by the appellant are both set aside. The order of the learned Single Judge also cannot be sustained and is hereby set aside.”

4. Learned counsel for the State has filed the counter-

affidavit, but, fairly admits that in the present case no Presenting Officer was appointed by the authority concerned and on the sole ground order dated 18.12.2015 was set aside and it has been informed through the bar that during the pendency of the case, the petitioner retired on 31.03.2023.

5. This writ petition stands allowed and order dated 18.12.2015, order dated 22.02.2016 and order dated 10.03.2016 are set aside.

(Rajesh Kumar Verma, J)

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