

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5155 of 2023

Chandra Prakash Poddar Son of Late Ram Udgar Poddar Resident of Village Ward No. 23, G.D. College Road (Meerganj), P.S. Begusarai Town, District-Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary/Secretary, Rural Development Department, Government of Bihar, Patna.
3. The MNREGA Commissioner, Rural Development Department, Government of Bihar, Patna.
4. The District Magistrate, Khagaria.
5. The Deputy Development Commissioner, Khagaria.
6. Mr. Dilip Kumar Agrawal, Officer on Special Duty, Department of Rural Development, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Saroj Kumar, Advocate
For the State	:	Mr. Dhirdyuti Kr. Verma, AC to SC 11

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 13-05-2024

The petitioner was appointed as ombudsman (Lokpal), Begusarai on 08th October 2021 as per the revised guideline for appointment of Ombudsman issued by the Government of India, Ministry of Rural Development, MNREGA (Mahatma Gandhi Rural Employment Guarantee Act) Division dated 28th August 2017. Subsequently, on 17th 2021, the petitioner was given additional charge of ombudsman for Khagaria. The petitioner received some complaint regarding malfunctioning and misappropriation of fund in respect of a work under MNREGA for filling of earth in the playground of Gandhi Inter Vidyalaya



situated at Beldour Block under the supervision of Beldour Panchayat. The petitioner made inquiry in respect of the said complaint and submitted a report on 01st February 2022 stating, *inter alia*, that in execution of the above mentioned work, there were widespread irregularity in the said work inasmuch as money was withdrawn by the Panchayat Rojgar Sevak for payment of wages to the workers but the workers did not receive the said money. Again, wages were paid to some other persons who did not perform the work of filling of earth. Thirdly, the project was initiated in the year 2018-19 but till date the said project was not completed and the concerned authority went on granting the extension of the period for completion of the project. The panchayat member was involved in misappropriation of money granted in the said project, moreover, he raised certain doubt against the Deputy Development Commissioner, Khagaria, in respect of her role in so far as granting the said work in question even after the stipulated period of completion of the scheme. The report submitted by the petitioner in his capacity as ombudsman (Lokpal) dated 11th March 2022 caused resentment to the local Mukhiya, namely, Shrimati Baby Rani and the Deputy Development Commissioner, respondent no. 05 herein. Shrimati Baby Rani lodged a complaint against the petitioner before



respondent no. 05, alleging misbehavior on 25th February 2022. Subsequently, the petitioner submitted his report on 11th March 2022 and passed a word with certain observations against the working of DDC, Khagaria work agency, Ex-Mukhiya, Beldour, Baby Rani and Panchayat Rojgar Sevak, Beldour.

2. It was alleged by the respondent authority that the language used in his report dated 11th March 2023 was unparliamentary, abusive of the position of the DDC, and direct insult upon the lady representative of panchayat and he was directed to show cause by the District Magistrate, Khagaria as to why disciplinary action shall not be taken against him. The petitioner submitted his detailed reply on 21st August 2022. The District Magistrate found the reply to be not satisfactory and sent the same to the Rural Development Department for taking action. Ultimately, the Special Secretary, Rural Development Department, Bihar sent the letter to the petitioner to explain as to why Departmental action shall not be taken against him. The petitioner again gave his detailed report, however, the said report was not held to be satisfactory and on 14th December 2022, the Secretary, Rural Development Department, Bihar passed an order terminating the service of the petitioner.



3. Being aggrieved, the petitioner has filed the instant writ petition praying for following reliefs:-

“(a) The order contained in letter no 1437950 dated 14.12.2022 passed by the Secretary, Rural Development, Government of Bihar; whereby the petitioner has been terminated from his post of Lokpal, MNREGA (Ombuds persons), Begusarai and Khagaria may be set aside.

(b) The petitioner may be reinstated on the post as was working.

(c) The termination of petitioner from the post of Lokpal, MNREGA, Begusarai, is baseless and without any dispute on which he may be reinstated at a glance.

(d) the another relief for which the petitioner is entitled to get.”

4. It is submitted by the learned senior counsel appearing on behalf of the petitioner that the revised guideline for appointment of ombudsman person has been published by the Ministry of Rural Development, Government of India, MNREGA Division, New Delhi on 28th August 2017 Rule 2.1 of the said guideline states:-

“2.1. A Selection Committee shall be constituted to recommend appointment of ombudsman.

2.1.1. The State Government may appoint more than one person but not more than two persons as the ombudsman in the district on the recommendation of the Selection Committee consisting of the following persons:-

(a) Additional Chief Secretary of the State Government nominated for the purpose—Chairperson

(b) Representative of Union Ministry of Rural Development-- Member

(c) Eminent Civil society Person nominated by Union Ministry of Rural Development – Member

(d) Principal Secretary/Secretary of the State Nodal Department- Member Convenor.”



5. Learned senior counsel appearing on behalf of the petitioner has also referred to Rule 2.1.3 of the aforementioned guideline wherein, it is clearly stated that the Selection Committee shall also have the power to recommend termination of the Ombudsman from his/her post in case of unsatisfactory performance after giving the Ombudsman opportunity of being heard.

6. It is submitted by the learned senior counsel appearing on behalf of the petitioner that the Ombudsman cannot be unilaterally terminated by the Secretary, Rural Development Department, Bihar because he is not the Selection authority of the Ombudsman. An ombudsman can only be terminated by the Selection Committee. Since the service of the petitioner has not been terminated by the Selection Committee, the order of termination is bad in law and liable to be rejected and quashed. In support of his contention, the learned Advocate for the petitioner has referred to a decision of the Hon'ble Supreme Court in the case of ***Roop Singh Negi v. Punjab National Bank***, reported in ***(2009) 2 SCC 570***. In paragraph 14 of the aforementioned decision, it is held by the Hon'ble Supreme Court that a departmental proceeding being a quasi-judicial function and the Inquiry Officer performing a quasi-judicial act, it is the incumbent



duty of the Inquiry Officer to come to a finding that the charges levelled against the delinquent officer were found to have been proved. The Inquiry Officer has duty to arrive at a finding taking into consideration the materials brought on record by the parties. The purported evidence collected during the investigation by the Investigating Officer against the delinquent employee by itself could not be treated to be an evidence to the disciplinary proceeding. It is the duty of the disciplinary authority to call for the witnesses in support of the charges and they are required to be examined and cross-examined. Thereafter, the disciplinary authority is entitled to pass a reasoned order. In ***Roop Singh*** (supra) the order of the disciplinary authority was not supported by reason, therefore, the Hon'ble Supreme Court quashed the entire disciplinary proceeding against the delinquent employee. In the instant case also the imputation of charge has not been proved by any evidence. The complaint was made by one Baby Rani and alleged observation of the DDC (though, it is not found in the writ petition as well as the counter-affidavit filed by the State respondents). The District Magistrate took a decision of termination of the petitioner without giving any opportunity to the petitioner of being heard and forwarded his decision to the Departmental Secretary, Rural Development Department, Bihar.



7. The learned senior counsel appearing on behalf of the petitioner also refers to another decision of the Hon'ble Supreme Court in the case of ***State of U.P. v. Saroj Kumar Sinha***, reported in ***(2010) 2 SCC 772***. It is observed by the Hon'ble Supreme Court that the function of the Inquiry Officer is to examine the evidence presented by the department even in the absence of a delinquent officer as to whether incorporated the evidence is sufficient to hold that charges are proved. It is pointed out by the learned Advocate for the petitioner that in the instant case memorandum of charge was not prepared, and no charge-sheet under *Prapatra* (फ़) was served upon the petitioner. No inquiry officer was appointed only on the basis of the initial reply of the petitioner to show cause the respondent authorities decided to terminate the petitioner from his service as ombudsman.

8. Referring to another decision of the Hon'ble Supreme Court in ***Oryx Fisheries (P) Ltd. v. Union of India***, reported in ***(2010) 13 SCC 427***, it is submitted by the learned Advocate appearing on behalf of the petitioner that it is the duty of the Investigating Officer as well as the disciplinary authority to record the reasons on the basis of the principle of natural justice because even in quasi-judicial proceeding it is the incumbent duty of the



disciplinary authority to show that the justice had not only being done but it must always appeared to be done as well.

9. The learned Advocate appearing on behalf of the State respondents has prayed for accommodation on the ground that his brief is misplaced. I am not inclined to allow such prayer after hearing the learned Advocate for the petitioner at length.

10. It appears from the record that the respondent nos. 04 and 05 have filed counter-affidavit against the instant writ petition and reiterated that the observation made by the petitioner in his report dated 11th March 2022 was unparliamentary, abusive, and made to tarnish the image of the office of respondent no. 05 without any basis.

11. Having heard the learned Advocate for the petitioner and on careful perusal of the materials on record including the counter-affidavit and the rejoinder to the counter-affidavit. This Court is of the view that in the instant case, the respondent authority did not follow the relevant guideline of termination of the ombudsman as stated in the revised guideline for appointment of ombudsman in Rule 2.1.1 read with Rule 2.1.3. The District Magistrate or the Departmental Secretary has no power to take a decision of termination unilaterally without a meeting of the Selection Committee who selected the petitioner as an ombudsman



(Lokpal). In view of such circumstances, this Court finds that the quasi-judicial power of the respondent authority was not observed and maintained as per the revised guideline for the appointment of the ombudsman dated 28th August 2017. The quasi-judicial authority fails to discharge its function in accordance with the accepted principles of natural justice. No charge was framed. The petitioner was not asked to submit his written statement on the basis of the charges. No inquiry officer was appointed, no witness was examined and without assigning any reason, the Secretary, Rural Development Department, Bihar issued the order of termination (Annexure 6) which is *per se* illegal and liable to be quashed and set aside. Accordingly, the order dated 14th September 2022 passed by the Secretary, Rural Development Department, Bihar is quashed and set aside.

12. The instant writ petition is accordingly, allowed on contest, however, there shall be no order as to cost.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
CAV DATE	NA
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