

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20663 of 2012

- 1.1. Hemanti Devi, Wife of late Sheo Kumar Saw, Resident of Village- Jurahi, P.O. Umga, Police Station- Madanpur, District- Aurangabad, Bihar.
- 1.2. Vishwanath Kumar, Son of late Sheo Kumar Saw, Resident of Village- Jurahi, P.O. Umga, Police Station- Madanpur, District- Aurangabad, Bihar.
- 1.3. Shravan Kumar, Son of late Sheo Kumar Saw, Resident of Village- Jurahi, P.O. Umga, Police Station- Madanpur, District- Aurangabad, Bihar.
- 1.4. Sangeeta Devi, D/o of late Sheo Kumar Saw, Resident of Village- Jurahi, P.O. Umga, Police Station- Madanpur, District- Aurangabad, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Magadh Range, Gaya
3. The District Magistrate, Aurangabad
4. The Block Development Officer, Navinagar, District - Aurangabad

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Mishra, Advocate Ms. Manini Jaiswal, Advocate Ms. Komal Mishra, Advocate
For the State	:	Mr. Dhurjati Kumar Prasad, GP-14

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 06-12-2024

In the instant petition, petitioners have prayed for the following relief(s):-

"(i) For issuance of an appropriate writ in the nature of certiorari quashing the order dated 13.09.2012 passed in Service Appeal No. 53 of 2011 passed by the Respondent No. 2 whereby and whereunder the appeal has been rejected without application of mind.

(ii) For issuance of an appropriate writ in the nature of certiorari quashing the order contained in Memo No. 33 dated



24.04.2007 issued under the signature of the Respondent District Magistrate, Aurangabad whereby and whereunder the services of the petitioner was dismissed from the service, from the post of Panchayat Sewak, Grampanchayat Sori, Block Development Officer, Navinagar, District-Aurangabad.

(iii) For issuance of an appropriate writ in the nature of mandamus commanding the respondents to reinstate the petitioner in the service with effect from 24.04.2007 with all consequential benefits.

(iv) Any other order or orders as your Lordships may deem fit and proper in the facts and circumstances of the case."

2. Deceased-Sheo Kumar Saw who was working with the respondents alleged to have committed misdeeds for which charges were framed on 07.08.2006 while suspending him on 17.03.2005. He had submitted his reply on 29.08.2006 and it was not satisfied by the disciplinary authority and proceeded to appoint inquiring officer and inquiring officer holding departmental inquiry proceeded to submit report on 26.12.2006. Resultantly, the disciplinary authority had issued a second show cause on 12.01.2007 followed by reply of the petitioner on 19.01.2007. Disciplinary authority proceeded to impose penalty of dismissal from service on 24.04.2007.

3. Feeling aggrieved by the dismissal order deceased-Sheo Kumar Saw preferred appeal before the appellate authority



and appellate authority affirmed the order of the disciplinary authority on 13.09.2012. It is also learnt that respondents have initiated criminal proceedings in which the deceased-Sheo Kumar Saw was acquitted in Mali P.S. Case No. 37 of 2005 on 25.03.2022.

4. In this background, learned counsel for the deceased-Sheo Kumar Saw submitted that there is a serious error committed by the disciplinary authority in not appointing presenting officer to present the case on behalf of the department before the inquiring authority, on the other hand, inquiring authority he himself has stepped into the shoe of the prosecutor as well as presiding officer. In other words, he has played dual role and it is not permissible. Having regard to the fact that he has played dual role obviously he was biased against the deceased-Sheo Kumar Saw.

5. Learned counsel for the deceased-Sheo Kumar Saw further submitted that in identical matter this Court has passed an order that presenting officer is mandatory in the case of **The State of Bihar & Ors. vs. Rameshwar Rai** passed in **LPA No. 837 of 2018** and it was subject matter of litigation before the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s) 9458 of 2023 and it was disposed of while affirming the Division Bench order on 20th November, 2024.



6. Learned counsel for the respondents resisted the aforementioned contention and submitted that the deceased-Sheo Kumar Saw is stated to have admitted certain misdeeds in respect of misappropriation of fund and he has stated to have deposited. Therefore, if there is any lacunae in not appointing the presenting officer would not be a hurdle insofar as conclusion of the departmental inquiry and imposition of penalty. Consequently, the petitioner has not made out case so as to interfere with the impugned order.

7. Heard learned counsels for the respective parties.

8. Deceased-Sheo Kumar Saw was subjected to disciplinary proceedings in the year, 2006 and it was concluded in imposition of penalty from dismissal of service and it is affirmed by the appellate authority. Respondents have not disputed that they had not appointed the presenting officer to present the case on behalf of the department against deceased-Sheo Kumar Saw before the inquiring authority, on the other hand, inquiring authority has played a dual role of presiding officer and presenting officer and the same is not permissible in law. When the statute stipulate a particular thing to be done in that event the same shall be adhered by the concerned authority. Disciplinary/Inquiring authority cannot sidetrack the relevant regulation insofar as not appointing the



presenting officer. Judicial review in respect of departmental inquiry is limited to the extent that is there any violation of statutory provision of law or violation of principle of natural justice. Hon'ble Supreme Court in the case of **State of Karnataka & Anr. vs. Umesh** reported in **(2022) 6 SCC 563**, in para 22 and 23 has held as follows:-

"22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and

(iv) whether the findings of the disciplinary authority suffer from perversity; and

(v) the penalty is disproportionate to the proven misconduct.

(Underline Supplied)

23. However, none of the above tests for attracting the interference of the



High Court were attracted in the present case. The Karnataka Administrative Tribunal having exercised the power of judicial review found no reason to interfere with the award of punishment of compulsory retirement. The Division Bench of the High Court exceeded its jurisdiction under Article 226 and trenched upon a domain which falls within the disciplinary jurisdiction of the employer. The enquiry was conducted in accordance with the principles of natural justice. The findings of the enquiry officer and the disciplinary authority are sustainable with reference to the evidence which was adduced during the enquiry. The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding."

9. In the light of these facts and circumstances read with the decision in the case of **Rameshwar Rai** (cited supra) and Special Leave to Appeal (C) No(s) 9458 of 2023 suffice for interference with the penalty of dismissal order and appellate authority's order. Even the matter cannot be remanded for the reasons the deceased employee-Sheo Kumar Saw has died during pendency of the present litigation.

10. In the light of these facts and circumstances, the legal heirs of deceased-Sheo Kumar Saw has made out a case so as to interfere with the impugned orders. Accordingly, the impugned orders dated 24.04.2007 (Annexure-9) and 13.09.2012 (Annexure-12) are set aside. Resultantly, legal heirs of the deceased employee



are entitled to all monetary benefits from the date of dismissal till date of retirement. Further, time to time increment in pay-scale and other monetary benefits shall be extended after due calculation and disburse the same to the legal heirs of the deceased employee-Sheo Kumar Saw. So also if the legal heirs are entitled to family pension in that event family pension shall be calculated from the date of death of the deceased employee-Sheo Kumar Saw and disburse the said monetary benefits. The above exercise shall be completed within a period of four months from the date of receipt of this order, failing which the legal-heirs petitioners are entitled to litigation cost and it is quantified @ Rs. 25,000/-.

10. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

