

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19006 of 2011

- 1.1. Neena Das W/o Late Subhash Chandra Das, R/o Matrichaya Banglow No. 380, Shivtej Nagar, Near Polite Harmitage, Sector No. 18, Pradhikaran, Pune City, Chinchwad East, Pune, Maharashtra-411019.
- 1.2. Shantanu Das S/o Late Subhash Chandra Das, R/o Matrichaya Banglow No. 380, Shivtej Nagar, Near Polite Harmitage, Sector No. 18, Pradhikaran, Pune City, Chinchwad East, Pune, Maharashtra-411019.
- 1.3. Navendu Das, S/o Late Subhash Chandra Das, R/o Matrichaya Banglow No. 380, Shivtej Nagar, Near Polite Harmitage, Sector No. 18, Pradhikaran, Pune City, Chinchwad East, Pune, Maharashtra-411019.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government Of Bihar, Vishveswaraiya Bhawan,
3. The Secretary, Road Construction Department, Government Of Bihar, Vishveswaraiya Bhawan, Bailey Roa
4. The Engineer In Chief Cum Addl. Secretary, Road Construction Department, Government Of Bihar, Vishv
5. The Joint Secretary, Road Construction Department, Government Of Bihar, Vishveswaraiya Bhawan, Bai
6. The Deputy Secretary Cum Chief Vigilance Officer, Road Construction Department, Government Of Bihr,
7. Bihar Public Service Commission Through Its Chairman.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jagannath Singh, Advocate Mr. Deepak Kumar, Advocate Ms. Jyoti Joshi, Advocate Mr. Padmanabh Kashyap, Advocate
For the Respondent/s	:	Mr. K.P. Gupta, SC 16

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

Date : 31-07-2024

In the instant writ petition, petitioners have prayed for
the following relief/reliefs:



“That this is an application for issuance of a writ in the nature of certiorari or any other appropriate writ/ rule/ direction for quashing the order as contained in Memo no. 3605(s) dated 12.03.2010 passed by the Secretary, Road Construction Department, Government of Bihar, Patna through which the application for revocation of suspension of the petitioner has been rejected (Annexure – 15) and also for quashing the concurrence granted by the Bihar Public Service Commission in its meeting dated 26.11.2010 (Annexure – 16) communicated through letter no. 24 – 14/2010 (2240) dated 2.12.2010 (Annexure – 17) and Memo no. 1990 (s) dated 13.7.2011 (Annexure – 18) through which the services of the petitioner has been dismissed with immediate effect and it was also directed that the services of the petitioner has been dismissed with immediate effect and it was also directed that the petitioner would get nothing except the subsistence allowances already paid to him in most illegal and arbitrary manner as also in violation to the relevant rules prescribed for conduct of a fair departmental enquiry and thereby directing the respondents to reinstate the petitioner in the service from the date his services has been dismissed i.e. 13.7.2011 and also to pay the



entire consequential benefits including the difference of pay with effect from the date he was placed under suspension.”

2. The deceased petitioner while holding the post of Assistant Engineer in the Road Construction Department, he was placed under suspension on 23.02.2004 with retrospective effect from 26.01.2004 on the allegations relating to the post held by him as a Secretary of the Rangkarmi Co-operative Housing Society of Bihar State Housing Co-operative Federation. Charges were framed on 16.01.2003, thereafter, there was alteration on 07.07.2003. Once again it was altered on 16.01.2007. The deceased petitioner had submitted reply to the charge memo on 18.02.2003. The inquiry was concluded in imposition of penalty of dismissal from service on 13.07.2011. The deceased petitioner would have retired from service on 20.09.2018, if he was in service. Thereafter, during pendency of the present writ petition, he died on 19.11.2023.

3. Learned counsel for the petitioners submitted that disciplinary authority has not pointed out source of power to initiate departmental inquiry in respect of alleged misconduct stated to have been committed by the deceased petitioner in the capacity of Secretary of the Rangkarmi Co-operative Housing



Society. The society is an independent institution. If any misdeed or misconduct committed by the deceased petitioner in the capacity of Secretary to that Society and not with reference to the post held by him as an Assistant Engineer in the government service, therefore, from the initiation of inquiry to further proceedings are liable to be set aside. It is further submitted that if the disciplinary authority is empowered to initiate departmental inquiry, even in such circumstances charge memo are not supported by list of witnesses. Even charges are not proved by adducing prosecution witnesses, on the other hand, with certain documents the charges are stated to have been proved. For the purpose of charge with reference to any document, in that event, author of the document was required to be examined and cross-examined in the light of Hon'ble Supreme Court decision in the case of *S.C. Girotra vs. United Commercial Bank (UCO BANK)* reported in **1995 Supp. (3) SCC 212**. It is also submitted that disciplinary authority has not followed the relevant provisions of law under Civil Services (Classification, Control and Appeal), Rules, 1930 read with Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

4. *Per contra*, learned counsel for the respondents resisted the aforementioned contentions. The disciplinary authority



has followed certain procedures insofar as initiation of inquiry and its conclusion. Scope of judicial review is limited, therefore, this Court cannot interfere insofar as imposition of penalty of dismissal from service.

5. Heard learned counsels for the respective parties.

6. Gist of the matter is that deceased petitioner was in the cadre of Assistant Engineer in the Road Construction Department. Simultaneously, he was holding a Secretary post in the Rangkarmi Co-operative Housing Society. If he had committed any misconduct in the society, the disciplinary authority is not empowered to initiate departmental inquiry for the reasons that any alleged misconduct or misdeed stated to have been committed by the deceased petitioner in the Society in the capacity of Secretary to that Society, at the best members of the Society or any other person who is interested in the Society and has *locus standi* could have initiated proceedings like approaching Registrar of Society in complaining and other remedy. Therefore, the disciplinary authority has committed patent error in initiation of inquiry and concluding in imposition of penalty of dismissal in respect of alleged misconduct stated to have been committed by the deceased employee of the Rangkarmi Co-operative Housing Society. This would go to the root of the matter, therefore, the



petitioners have made out a *prima facie* case so as to interfere with the dismissal order. Even otherwise, disciplinary authority has not followed the Rules and procedure like examination of author of the documents.

7. Accordingly, impugned orders dated 12.03.2010, 26.11.2010 and 13.07.2011 stands set aside.

8. Writ petition stands allowed.

9. The concerned respondent is hereby directed to settle all monetary dues of the deceased petitioner to his legal heirs after due verification of legal heirs of the deceased – petitioner. The arrears shall be calculated and disbursed within a period of four months from the date of receipt of copy of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.08.2024
Transmission Date	NA

