

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11698 of 2024

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Dinesh Kumar Son of F.C. Prasad, Resident of Block- Yamuna-4, Flat No. 503, Jalalpur City, Ram Jaypal Path, P.S.- Danapur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Bihar, Patna.
2. The Principal Secretary, Rural Development Department, Bihar, Patna.
3. The Under Secretary, General Administration Department, Patna, Bihar.
4. Deputy Secretary, General Administration Department, Bihar, Patna.
5. The District Magistrate, West Champaran, Bettiah.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prince Kumar Mishra, Advocate
		Mr. Vikas Kumar Jha, Advocate
For the Respondent/s	:	Mr. Addl. Advocate General 12

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 06-08-2024

Heard Mr. Prince Kumar Mishra, learned counsel along with Mr. Vikas Kumar Jha, learned counsel appearing on behalf of the petitioner and learned Additional Advocate General-12 for the State.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:

"a) For issuance of writ in the nature of Certiorari, quashing the Resolution contained in Memo No. 16484 dated 27.12.2021 issued by Under Secretary to Government, General Administration Department, Bihar, Patna, (hereinafter referred as Impugned Order) whereby and whereunder, petitioner has been inflicted with the punishment of (i) Censure (for the year 2007-08) & (ii) Withholding of one increment with non-cumulative effect under Rule-14 of Bihar Government Servant (Classification Control and Appeal) Rules, 2005, (hereinafter referred "C.C.A. Rules") in most arbitrary and illegal manner.

b) For holding and declaring that Hon'ble Lokayukta, Bihar, Patna, has no power to direct for initiation of



departmental/disciplinary proceeding against any government in view of the case law laid down in the case of Bipin Bihari Singh versus The State of Bihar and Others reported in 2020 (3) P.L.J.R.10.

c) For any other relief/reliefs which this Hon'ble Court deems fit."

3. Mr. Prince Kumar Mishra, learned counsel appearing on behalf of the petitioner submitted that way back in the year 2016, the petitioner was served with show-cause in respect of alleged misconduct and after holding enquiry, the District Magistrate has found that no further disciplinary action is required against the petitioner. Thereafter, on the basis of a complaint lodged by the Mukhiya of Dhokaraha Gram Panchayat, West Champaran, the Hon'ble Member (Judicial), Lokayukta, Bihar, Patna had passed detailed order dated 19.01.2018 in 1/Lok (Panchayati Raj) 77/2017 against the petitioner for holding enquiry. Learned counsel further submitted that in complete violation of principle of natural justice, as well as, in violation of Rule 16 of the Bihar Government Servants (Classification Control & Appeal) Rules, 2005 (hereinafter referred to as the "Bihar C.C.A. Rules, 2005") without obtaining approval of the State Government (appointing authority of the petitioner), the Under Secretary, General Administration Department, Bihar, Patna, vide letter no. 2459 dated 21.02.2018, issued notice to the petitioner to appear before the office of the



Hon'ble Member (Judicial), Lokayukta, Bihar, Patna on 21.05.2018. Subsequent to that, the Lokayukta had passed a detailed order dated 21.05.2018 in Smt. Pappi Singh Vs. Block Development Officer, Bihar (1/Lok (Panchayati Raj) 77/2007) giving last opportunity to respondent authorities to take action in departmental proceeding against the petitioner. Thereafter, vide order dated 27.12.2021 contained in Memo No. 16484 (Annexure-P/9 to the writ petition), issued under the signature of Under Secretary to the Government, General Administration Department, Bihar Patna, petitioner has been inflicted punishment of Censure (for the year 2007-2008) and withholding of one increment with non-cumulative effect, under Rule 14 of the Bihar C.C.A. Rules, 2005. Learned counsel further submitted that there is complete violation of Article 311 of the Constitution by not following the mandate of Rule 17(3) and Rules 17(7) of the Bihar C.C.A. Rules, 2005. Learned counsel submitted that in absence of any approval of the State Government being the appointing authority of the petitioner, the charge memo served upon the petitioner cannot be sustained and, on these grounds, learned counsel further submitted that the impugned order dated 27.12.2021 contained in Memo No. 16484 (Annexure-P/9 to the writ petition), which is without



obtaining the approval of the State Government (being appointing authority of the petitioner) is also not sustainable in the eye of law. On these grounds, learned counsel submitted that the entire disciplinary action taken against the petitioner is without jurisdiction and is not sustainable in the eye of law.

4. Learned counsel appearing on behalf of the State has defended the order passed by the Disciplinary Authority and submitted that complete enquiry was conducted by the Hon'ble Lokayukta and then, based on the order of the Hon'ble Lokayukta an enquiry was conducted and the petitioner had participated in the Enquiry. The order of punishment has been passed against the petitioner inflicting punishment of Censure (for the year 2007-2008) and withholding of one increment with non-cumulative effect cannot be faulted. There is compliance of Rule 16 and Rule 17 of the Bihar C.C.A. Rules, 2005 and due opportunity was given to the petitioner by following the principle of natural justice. The writ petition doesn't require any further interference with the penalty order.

5. Heard the parties.

6. I have given anxious consideration to the submissions made on behalf of the respective counsel and I have perused the material available on record. The statutory frame



work of the Lokayukta Act requires to be considered to consider the submission of the learned counsel appearing for the petitioner.

7. Be it noted that Act of 2011 came into force with effect from 23.12.2011, repealing the earlier Bihar Lokayukta Act, 1973. The repeal and savings clause contained in section 59 of the Act of 2011 reads as under :-

“59(2) Notwithstanding such repeal anything done or any action taken in exercise of the powers conferred by or under the said Bihar Lokayukta Act, 1973 shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action taken.”

8. The definition of allegation as occurring in the Act of 2011 reads as under :-

“2(a) “Allegation” in relation to a public servant means affirmation that such public servant-

(i) has abused his position as such to obtain any undue gain or favour to himself or to any other person to cause undue harm or hardship to any other person or loss to the State Government.

(ii) was actuated in the discharge of the functions as such public servant by personal interest or improper, corrupt motives, or

(iii) is guilty of corruption or lack of integrity in his capacity as such public servant.

(iv) has done anything punishable under the Prevention of Corruption Act, 1988.”

9. Now coming to the facts of the case that the petitioner was served "Prapatra K" on 31.10.2016, while he was posted as Block Development Officer, Majhaulia, West Champaran, in respect of charges relating to certain



irregularities on the basis of the order passed by the Lokayukta dated 19.01.2018 that in spite of the fact that the Enquiry report contained in Letter No. 101 dated 07.12.2007, no action was taken against the petitioner (the then Block Development Officer) despite an adverse finding recorded by the former Director, D.R.D.A., Bettiah and the office of the Collector, West Champaran and, after three years, the then Collector, West Champaran vide his letter no. 197 dated 31.12.2010 had informed that he was in agreement with the finding recorded by the Director, D.R.D.A. and without recording any reason, he had informed vide letter no. 33 dated 21.02.2015 that there was requirement for a fresh enquiry into the allegation against the petitioner. Thereafter, Three Men Enquiry report was submitted contained in Letter No. 34 dated 10.04.2018 and matter was fixed on 21.05.2018 by the Lokayukta, on which date, the Lokayukta having found that the Enquiry Report was not submitted in compliance of earlier order, had again fixed the date for further hearing on 14.09.2018 and finally, the Lokayukta had passed order dated 12.05.2021 on the basis of finding recorded in the interim order dated 18.02.2019 read with earlier order recommended for initiation of Departmental Proceeding against the petitioner both for his forced stopping



the Scheme of Panchayat and submitted a misleading report/explanation to the institution of Lokayukta. The Lokayukta has further observed that " it is a matter of fact that female Mukhiya was hit hard by the conspiracy of the panchayat Secretary and Block Development Officer and the scheme of the panchayat has taken a back seat due to misconduct on the part of Sri Dinesh Kumar, the then Block Development Officer."

10. The Disciplinary Authority without holding enquiry, as I have already recorded above in submission of the petitioner, passed the impugned order contained in Memo No. 16484 dated 27.12.2021.

11. On mere consideration of the charge memo dated 31.10.2016, I find that Rule 14 of the Bihar C.C.A. Rules, 2005, prescribes for minor and major penalties. The withholding of increment of pay without cumulative effect is minor penalty as per the Sub-Rules (v) of Rule 14 of the Bihar C.C.A. Rules, 2005. The Disciplinary Authorities has been prescribed in Rule-15 of the Bihar C.C.A. Rules, 2005, which provides that the Government may impose any of the penalties specified in Rules-14 on any Government Servant. The condition has been imposed that the same can be imposed on a Government Servant by the Disciplinary Authority or any Authority to which the



Appointing Authority is subordinate or by any other authority empowered in this regard by a general or special order of the Government. Rule-16 of the Bihar C.C.A. Rules, 2005, deals with the Authority to institute proceeding. It clarifies that the Government or Appointing Authority or any Authority to which the Appointing Authority is subordinate or by any other authority empowered in this regard by a general or special order of the Government may institute Disciplinary Proceedings against any Government Servant or direct a Disciplinary Authority to institute Disciplinary Proceedings against any Government Servant on whom that disciplinary authority is competent to impose any of the penalties specified in Rule-14.

12. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that



basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment.

13. I find that the impugned order contained in Memo No. 16484 dated 27.12.2021 issued by Under Secretary to Government, General Administration Department, Bihar, Patna, has been passed without holding proper enquiry in respect of charges levelled against the petitioner and without consideration of reply of the petitioner, merely on the basis of assumption on the directions of the Hon'ble Lokayukta, Bihar. The withholding of one increment without cumulative effect under Rule-14 of the Bihar C.C.A. Rules, 2005, requires to be in accordance with Rules 15 and 16 of the Rules, 2005 and the manner prescribed under Rule 19 of the Rules, 2005 for imposing minor penalties.

14. In the present case, there has been complete violation of holding an enquiry as per the manner prescribed in Sub-Rule (b) of Rule 19 of the Bihar C.C.A. Rules, 2005, inasmuch as, which prescribes for holding of an enquiry in the



manner laid down in Sub-Rules (3) to Rule-23 of Rule 17, in every case, in which the Disciplinary Authority is of opinion that such Enquiry is necessary. I find that at the same time, there has been complete violation of the mandatory provision as contained in Sub-Rule (c), (d) and (3) of Rule-1 and also Sub-Rule (2) of Rule 19.

15. The very initiation of the Disciplinary Proceeding in the present case has taken place as per the direction of the Hon'ble Lokayukta, Bihar in violation of the Rules. This Court in case of ***Bipin Bihari Singh vs. The State of Bihar*** reported in ***2020 (3) P.L.J.R. 10*** has held that Hon'ble Lokayukta, Bihar, Patna, has no power to direct for initiation of Departmental/Disciplinary Proceeding against any Government Servant. It is worth to quote paragraphs no. 15, 16, 17, 21, 23, 24 and 27 of the judgment passed in case of ***Bipin Bihari Singh (supra)***, which are *inter alia* reproduced hereinafter:

"15. In the background of the abovenoted facts, I proceed to answer the legal question, as noticed at the very outset, which the present writ application involves in the light of statutory provisions, dealing with jurisdiction of Lokayukta under the Act of 2011.

16. Before I refer to various provisions under the Act of 2011, I must mention that the Lokpal and Lokayuktas Act, 2013(hereinafter referred to as the 'Lokpal Act') (a Central Act), which received the assent of the President on 01.01.2014 i.e. subsequent to enactment of the Act of 2011, envisages, inter alia, establishment of Lokayukta for every State, if not so established, by law made by State Legislature, 'to deal with complaints relating to corruption against certain public functionaries'. Many of the provisions under Bihar Lokayukta Act, 2011 and Lokpal and Lokayuktas Act, 2013 are akin to each other. The preamble of Lokpal Act reads as under :-



“An Act to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India established a Democratic Republic to ensure justice for all;

And WHEREAS India has ratified the United Nations Convention Against Corruption; and

WHEREAS the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption.”

Now, THEREFORE, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of corruption.”

17. The preamble of Bihar Lokayukta Act, 2011 makes clear the purpose behind enactment of the Act, viz. to provide for establishment of institution of Lokayukta, its powers and functions and 'for expeditious investigation and prosecution relating to allegation involving corruption against public servants of all grades'. Chapter VII of the Act of 2011 lays down the procedure in respect of inquiry and investigation. Section 27 under Chapter VII of the Act of 2011 stipulates the action which may be taken on inquiry in relation to the public servants other than the Chief Minister or Ministers or members of the State Legislature. Since Section 27 of the Act of 2011 is one of the significant provisions to address the legal issues raised in the present writ application, the same is being reproduced hereinbelow :-

“27. Action on inquiry in relation to Public Servants not being Chief Minister or Ministers or Members of the State Legislature.-(1) Where after the conclusion of the inquiry or investigation, the findings of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (d), (e), (f), or (g) of sub-section (1) of Section 16, any officer authorized by Lokayukta shall-

(a) file a case in the Special Court and send a copy of the report together with its findings to the competent authority; and

(b) recommend to the competent authority for initiation of disciplinary proceedings under the rules of disciplinary proceedings applicable to such public servant;

(c) provide a copy of the report to the public servant or his representative;

(2) The competent authority shall, having regard to the recommendations of the Lokayukta within a period of thirty days of the receipt of recommendation under clause (b) of sub-section (1), initiate disciplinary proceedings against the delinquent public servant accused of committing offence under the Prevention of Corruption Act, 1988 and forward its comments on the report, including the action taken or proposed to be taken thereon, to the Chairperson ordinarily within six months of initiation of such disciplinary proceedings.”

21. On conjoint reading of Sections 28A and 29 of the Act, I have absolutely no hesitation in reaching a definite conclusion that Lokayukta has no jurisdiction, acting on a



complaint containing grievance of maladministration beyond submitting a report to the competent authority, as defined under Section 2(d) of the Act, prescribing the manner in which injustice or undue hardship has to be remedied or redressed. It is expected of the competent authority to examine the report and inform the Lokayukta, the action taken or proposed to be taken on the basis of the report. In view of clear language used in Section 28A of the Act, Lokayukta does not have any jurisdiction to issue any direction to the competent authority. The provision clearly stipulates that if, on receipt of report from the competent authority, in response to recommendations made by the Lokayukta, the Lokayukta is dissatisfied with the action taken or proposed to be taken, he can make 'a special report to the Governor of the State and inform the complainant in this regard'. Lokayukta does not have any other jurisdiction at all under the Act when the matter is on the basis of a complaint raising a grievance of maladministration.

23. Before I conclude, I must not lose sight of the other powers and functions conferred on the institution of Lokayukta under Section 38 of the Act, which reads as under :-

“38. Other power and function.- Lokayukta shall have also following functions and powers:-

1.(a) If the Lokayukta prima facie is satisfied on the basis of preliminary inquiry of investigation that a lease, license, permission, contract or agreement was obtained by corrupt means including misfeasance, misrepresentation, fraud and coercion, it shall recommend cancellation or modification of the lease, license, permission, contract or agreement and it may also recommend blacklisting of firm, company, contractor or any other person involved in act of corruption. The above said recommendations shall be complied by the public authority or be rejected by him within a month of receipt of recommendation.

(b) If the Lokayukta in course of any investigation is satisfied that any preventive action is necessary in public interest to prevent the ongoing incident of corruption it may make recommendation to the public authority concerned either to stay the implementation/ enforcement of any decision or take any such action as is recommended by the Lokayukta. The aforesaid recommendation shall be complied by public authority or be rejected by him within fifteen days of receipt of recommendation.

(c) to monitor the investigation of offences under Prevention of Corruption Act, 1988 involving any act of corruption, for the cases initiated on behalf of the Lokayukta.

(d) to initiate prosecution before a Special Court established under the Prevention of Corruption Act, 1988 and the Bihar Special Courts Act, 2009, for the cases initiated on behalf of the Lokayukta.

(e) to appoint prosecutors and Senior Counsels under Prevention of Corruption Act, 1988 or under the Bihar Special Court Act, 2009 or under this Act, for the cases initiated on behalf of Lokayukta.

(f) to get the Investigating Officer trained in modern methods of scientific investigation.

(g) to enquire modern equipments necessary for proper investigation.

(h) to receive complaints against any officer or staff of Lokayukta.



(i) to ensure the integrity of its functionaries and impose punishments of dismissal, removal and reduction in rank."

24. There is no jurisdiction, under the aforesaid provision too, vested in the institution of Lokayukta to direct for initiation of a disciplinary proceeding, unless requisite conditions envisaged in Section 27 of the Act of 2011 are available.

27. If a statutory authority assumes to act in a case over which the law does not give it authority, the proceeding and adjudication will be altogether void. An authority has jurisdiction of any subject matter if, by the law of its organization, it has authority to take cognizance of, try, and determine cases of that description and not otherwise. (See A Treatise on the Constitutional Limitations by THOMAS M. COOLEY)."

16. The Hon'ble Supreme Court in the case of ***State of Karnataka Vs. Umesh***, reported in ***(2022) 6 SCC 563***, in paragraph Nos.16 to 23, has held that:

"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."

17. Hence, the dictum laid down by the Hon'ble Apex Court in the above case, clarifies that if the findings of the



disciplinary authority suffers from perversity, then this Court can interfere with the said order.

18. The Apex Court in the case of ***Sarvepalli Ramaiah v. District Collector, Chittoor***, reported in (2019) 4SCC 500 has held as follows:-

“40. Administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. Except on these grounds administrative decisions are not interfered with, in exercise of the extraordinary power of judicial review.43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process...”

19. In the above background, I am of the opinion that in cases where the Lokayukta is not satisfied with the closure of the proceeding, the only remedy available under the Act is to communicate the same to the Governor and it is the function of the Governor to place before each houses of the State Legislature along with an explanatory memorandum. The office of the Lokayukta is on a much higher pedestal than that of an Enquiry Officer in a Departmental Enquiry. If the report submitted by the Lokayukta is declined to be accepted by the Competent Authority, who alone has the discretion either to entrust or to not entrust the enquiry. In view of the above fact, I find that the Lokayukta had called for a fresh enquiry into the allegation against the petitioner and based on the said enquiry,



the Lokayukta directed to take legal action and as per the direction, the Disciplinary Authority, has passed the impugned order.

20. In view of the above facts and the provision of Bihar C.C.A. Rules, 2005 and the law laid down by the Apex Court hereinabove, I am of the opinion that the penalty order dated 27.12.2021 contained in Memo No. 16484 issued by Under Secretary to Government, General Administration Department, Bihar, Patna, has been passed without following the prescribed Rules and is hereby set-aside and quashed.

21. In light of the recorded evidence, if the State Government still finds that the petitioner should be subjected to disciplinary action, in that case, any action is required in accordance with law.

22. If the petitioner finds it proper, she can represent before the appropriate authority for considering her case.

23. The writ petition stands disposed of.

24. There shall be no order as to costs.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	19.08.2024
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