

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1508 of 2019
In
Civil Writ Jurisdiction Case No.17106 of 2018

1. The State of Bihar
2. The Director, Primary Education, Directorate of Primary Education, Govt. of Bihar, Patna
3. The Regional Deputy Director of Education, Magadh Division, Gaya
4. The Regional Deputy Director of Education, Patna Division, Patna
5. The District Education Officer, Aurangabad

... .. Appellants

Versus

Uma Shankar Singh, S/o Late Sarwajeet Singh resident of village-
Chhabilapur, P.O.- Srikhinda, P.S.- Nokha, District- Rohtas, Sasaram

... .. Respondent

Appearance :

For the Appellants	:	Mr. Samir Kumar, Advocate
	:	Mr. Subhash chandra Mishra, SC-16
For the Respondent	:	Mr. Ranjeet Kumar, Advocate
	:	Mr. Ayush Kumar, Advocate
	:	Mr. Kanishk Kaustubh, Advocate
	:	Mr. Shikhar Mani, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)
Re: I.A. No. 01 of 2019

8 04-01-2024

The present application has been filed under Section 5 of the Limitation Act for condonation of delay of 155 days caused in preferring the present Letters Patent Appeal.

2. Heard Mr. Samir Kumar, learned counsel for the State-Appellants and Mr. Ranjeet Kumar learned counsel for the Respondent.

3. We have considered the submissions canvassed by learned counsel appearing for the parties. We have also perused the



averments made in this application and we are of the view that the appellants/applicants have shown sufficient cause for not preferring the Letters Patent Appeal within the period of limitation.

4. Accordingly, this application is allowed. Delay is condoned.

L.P.A. No.1508 of 2019

The State-appellants have preferred this appeal under Clause 10 of the Letters Patent Appeal of the Patna High Court Rules against oral judgment dated 16.05.2019 rendered by a Co-ordinate Bench of this Court passed in C.W.J.C. No. 17106 of 2018 whereby learned Single Judge has allowed the writ petition filed by the present Respondent/original writ petitioner and direction was issued to the appellants/original respondents to reinstate the original writ petitioner with all consequential benefits.

2. The factual matrix of the present case is as under:-

2.1. The original writ petitioner was posted as Block Education Officer, Obra, District-Aurangabad. While he was on duty, a trap was laid by the Vigilance Investigation Bureau on 24.11.2016 and the petitioner is alleged to have been caught while receiving a bribe of Rs. 10,000/-. Thereafter, a Vigilance P.S. Case No. 125 of 2016 was registered on 24.11.2016 against the petitioner for the offences punishable under Section 7 read with



Section 13(ii) read with Section 13(2)(a) of the Prevention of Corruption Act. After registration of the said FIR, petitioner was arrested and he was remanded to judicial custody whereupon he was suspended by the Department *vide* order dated 08.12.2016. The petitioner was thereafter released on bail *vide* order dated 06.02.2017 passed by the learned Special Judge, Vigilance Trap, Patna. The concerned Investigating Officer informed the appellants' department that the FIR has been registered against the petitioner and, therefore, on the basis of the said letter, the departmental enquiry was initiated against the petitioner. A charge memo was issued against the petitioner in which three different charges were levelled against him. A Presenting Officer was appointed and the Inquiry Officer was also appointed for conducting the departmental enquiry.

2.2. The Enquiry Officer submitted his report wherein he has observed that charge no. 1 is not duly proved. However, so far as charge nos. 2 & 3 are concerned, it is observed that the said charges are proved and, therefore, the disciplinary authority relying upon the report submitted by the Enquiry Officer passed order of dismissal after issuance of the show cause notice to the petitioner. The order of dismissal was passed on 08.12.2017 by one of the appellants herein.

2.3. Against this order of dismissal passed by concerned



appellants/original respondents, the petitioner appealed before the Appellate Authority. However, the appeal filed by the petitioner was also dismissed by the Appellate Authority vide order dated 12.07.2018.

2.4. The petitioner, therefore, preferred captioned writ petition before this court. Learned Single Judge by the oral judgment dated 16.05.2019 allowed the writ petition filed by the writ petitioner. The original respondents have, therefore, filed the present Letters Patent Appeal.

3. Learned counsel appearing for the appellants has assailed the impugned order passed by the learned Single Judge by mainly contending that the department has produced Pre Trap/Post Trap memo during the course of the enquiry and, therefore, on the basis of the same, the Enquiry Officers has rightly observed that charge nos. 2 & 3 are duly proved against the petitioner. The disciplinary authority has rightly passed an order of dismissal of the petitioner and, therefore, learned Single Judge ought not to have interfered with the said order passed by the disciplinary authority as well as the appellate authority. At this stage, it is also contended by the learned counsel appearing for the State-appellants that even if the learned Single Judge was of the view that during the course of the departmental enquiry, the department has not produced documentary evidence or not led any oral



evidence, the learned Single Judge ought to have granted another opportunity to the department to produce the evidence in the form of oral as well as documentary before the Enquiry Officer and for the said purpose ought to have remanded the matter back. However, the learned Single Judge has issued the direction to reinstate the writ petitioner with all consequential benefits by quashing/setting aside the order of dismissal. Learned counsel for the appellants-State, therefore, urged that the impugned order be quashed and set aside.

4. On the other hand, learned counsel appearing for the present opponent/original writ petitioner has vehemently opposed the present appeal filed by the appellants herein. Learned counsel for the original writ petitioner would mainly submit that during the course of the departmental enquiry, the department has neither produced any documentary evidence nor any witness was examined. It is pointed out by learned counsel for the petitioner from the document produced at page no. 45 i.e. memo of the charge, that while issuing charge memo, the department has not referred about the name of the witnesses or documentary evidence.

5. It is thereafter contended by learned counsel for the original petitioner that when the department has failed to prove the charges levelled against the petitioner, learned Single Judge has rightly quashed and set aside the order of dismissal passed against



the petitioner by the original respondent department.

6. Learned counsel has also placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of ***Roop Singh Negi vs. Punjab National Bank & ors.*** reported in ***2009(2) SCC 570***. It is submitted that in similar type of case the Hon'ble Supreme Court has passed the order in favour of the delinquent employee. It is pointed out that learned Single Judge has rightly placed reliance upon the aforesaid decision rendered by the Hon'ble Supreme Court. Learned counsel for the petitioner has also placed reliance upon the order dated 05.12.2016 passed by the learned Single Judge of this Court in CWJC No. 280 of 2016 and contended that in similar type of case, learned Single Judge has quashed and set aside the order of dismissal. It is also pointed out that against the said order, the State and the concerned department has preferred Letters Patent Appeal No. 63 of 2017 and the Division Bench of this Court *vide* order dated 22.08.2017 and dismissed the LPA filed by the appellant. It is also pointed out that against the order passed by the aforesaid LPA, the State preferred SLP before the Hon'ble Supreme Court. However, SLP filed by the State was also dismissed as withdrawn by granting liberty to file review application. Learned counsel for the petitioner has referred all the aforesaid orders passed in similar type of case. Copy of the said order are produced on record of the writ petition.



7. Learned Advocate for the Original petitioner, therefore, urged that the present appeal filed by the appellants be dismissed.

8. Having heard learned counsel appearing for the parties and having gone through the material placed on record, it would emerge that when the original petitioner was working on the post of Block Education Officer, a trap was laid by Vigilance Investigation Bureau in November, 2016 and it is alleged that during the course of the said trap, petitioner was caught red handed while demanding bribe of Rs. 10,000/-. An FIR was lodged for the said incident and it is said that the criminal case registered against the petitioner is still pending before the competent criminal court. However, on the basis of the said occurrence/incident, the department thought it fit to initiate departmental enquiry against the petitioner and initially the petitioner was suspended and thereafter, the charge-memo was issued to the petitioner. Copy of the said charge-memo is placed on record at page 45 with the writ petition. If the said charge-memo is seen, it is revealed that the department has not stated the name of the witnesses nor any documentary evidence was supplied to the petitioner in support of the said charges levelled against the petitioner. It would, further, emerge from the record that during the course of the departmental enquiry, even the complainant was not examined by the



department nor the department has examined any witnesses in support of the charges levelled against the delinquent employee/original writ petitioner. The department has not proved any documents with a view to substantiate the charge levelled against the delinquent Officer/Original writ petitioner. It is pertinent to note that, for the first time before this Court, learned counsel appearing for the State-appellants has contended that Pre Trap Memo and Post Trap Memo were produced during the course of the departmental enquiry. However, learned counsel for the appellant has failed to point out the said aspect from the material placed on record and even from the enquiry report submitted by the Enquiry Officer. Thus, fact remains that the department has failed to produce any documents during the course of the enquiry with a view to prove the charges levelled against the petitioner.

9. We have also gone through the enquiry report, copy of which is placed on record at page 60 of the compilation with the writ petition, from which it is revealed that the Enquiry Officer has observed that charge no. 1 is not proved, however, charge nos. 2 & 3 are duly proved. While making such observation, the Enquiry Officer has simply observed that the reply submitted by the delinquent is required to be kept in view. However, as the Vigilance Investigating Bureau has arrested the petitioner delinquent and he was sent to judicial custody, Charge nos. 2 & 3



are duly proved. At this stage, it is pertinent to note that till date, the criminal proceedings are pending against the petitioner before the competent criminal court and on the basis of the allegations levelled against the petitioner in the FIR, petitioner is not convicted till date.

10. In the case of **Roop Singh Negi (Supra)**, the Hon'ble Supreme Court has observed in para 14, 15 & 23 is as under:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the



only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a matter that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to



be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable to a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

11. Keeping in view the aforesaid decision rendered by the Hon'ble Supreme Court, if the facts of the present case are examined, we are of the view that the aforesaid decision will be applicable to the facts of the present case.

12. We have also gone through the reasoning given by the Learned Single Judge and we are of the view that the learned Single Judge has not committed any error while passing the impugned order and while giving direction to the present appellants to reinstate the petitioner with all consequential benefits.

12.1. At this stage, it is pertinent to note that learned counsel appearing for the present opponent/original petitioner has, under the instruction, submitted that recently the present appellants



have fully complied with the order passed by the learned Single Judge.

13. In view of the aforesaid facts and circumstances of the present case, we are not inclined to entertain the present appeal.

14. Accordingly, the same is dismissed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Gaurav Kumar/-

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