

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5492 of 2020**

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Perwez Nazir Son of Late Azimuddin Resident of Village-Quazibasti Dohar,  
Post- Sontha, P.S.- Bahadurganj, District- Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Cabinet Secretariat (Rajbhasa) Department, Government of Bihar, Patna.
2. The Director Rajbhasa (Urdu Directorate), Government of Bihar, Patna.
3. The District Magistrate, Araria.
4. The Deputy Development Commissioner, Araria.
5. The Sub- Divisional Officer, Araria.
6. The Block Development Officer Sikty, Araria.
7. The Conducting Officer, The Duputy Election Officer, Araria.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|-------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Mrigank Mauli, Sr. Advocate with<br>Mr. Samir Kumar, Advocate |
| For the Respondent/s | : | Mr. Md. Raisul Haque, SC 10<br>Mr. Obaidullah, AC to SC 10        |

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 16-06-2025**

Heard Mr. Mrigank Mauli, learned Senior Advocate  
with Mr. Samir Kumar, learned Advocate for the petitioner and  
Mr. Md. Abaidullah, learned Advocate for the State.

2. The petitioner is aggrieved with the order dated  
28.12.2018 issued under the signature of the Director Rajbhasa  
(Urdu Directorate), Government of Bihar, Patna, whereby the  
petitioner has been inflicted with the punishment of withholding  
of three annual increments with cumulative effect. Further



prayer has been made to release the salary of the petitioner for the period he has not been allowed to discharge the duty.

3. The facts of the case, in hand, are in limited bound. This is the second round of litigation; the petitioner, who had been given the charge of Nazir under Sikti Block, was subjected to departmental proceeding on account of charges of irregularities, *inter alia*, depositing of amount of different scheme in the account of Dehati PACS, contrary to the government decision/orders, which led to initiation of departmental proceeding and was finally inflicted with the punishment of dismissal vide order 26.02.2014 bearing Memo No. 79 issued by the Principal Secretary, Cabinet Secretariat Department, Government of Bihar. The order, afore noted, was put to challenge in CWJC No. 7002 of 2014. A Bench of this Court taking note of the fact that the issues which were required to be considered by the disciplinary authority while exercising jurisdiction under Rule 18 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules, 2005') had proceeded to award the severe punishment of dismissal, without considering the relevant facts and submissions made by the petitioner, has been pleased to quash the order dated 26.02.2014 issued by the



disciplinary authority. The matter was relegated to the disciplinary authority to take a final decision with reference to the materials available on record before the Enquiry Officer and pass a reasoned and speaking order. This led to issuance of the impugned order as contained in Memo No. 171 dated 28.12.2018, which is now questioned in the present writ petition.

4. It would also be worth mentioning that during the pendency of the writ petition counter affidavit came to be filed bringing on record the order dated 28.12.2018 by which the Department of Rajbhasa (Urdu Directorate), Government of Bihar, Patna has also treated the period of dismissal as a period of suspension. This order also came to be challenged by filing Interlocutory Application No. 1 of 2024.

5. Learned Senior Advocate for the petitioner taking this Court through the order passed by a Bench of this Court in CWJC No. 7002 of 2014 has strenuously argued that the learned Court has specifically considered and observed that the Presenting Officer, who had presented the case on behalf of the Department has failed to produce any of the materials to sustain the charges; no documentary or oral evidence was adduced. The respondent State has also failed to point out from the enquiry



report that the same is based on any evidence whatsoever. The Court has emphasized and reminded the scope of power to be exercised by the disciplinary authority as prescribed under the Bihar Government Servants (Classification Control & Appeal) Rules 2005, more specifically Rule 18 thereof. While setting aside the order of dismissal, the Court also highlighted the importance of assigning reasons so as to ensure fairness and compliance of principles of natural justice.

6. Adverting to the, aforementioned, observation of the Court referred to in earlier round of litigation, learned Senior Advocate drew the attention of this Court to the impugned order and submitted with all vehemence that the disciplinary authority accepted the contention of the petitioner that there was no material or any documentary or oral evidence to sustain the charges; however he has returned the finding of guilt on account of the fact that the petitioner while holding the post of Nazir has failed to bring the fact to notice to the senior officers and irregularities committed at the hands of the Block Development Officer, which was not at all part of the memo of charge. To support the aforesaid contention, attention of this Court has also been drawn to the memo of charges and submission has been made that there is no imputation and even whisper with



regard to the charge of negligence on the part of the petitioner for which the petitioner has been held guilty and major penalty of withholding of three annual increments with cumulative effect has been inflicted.

7. It is further contented that once this Court in the earlier round of litigation has already held that there was no material available on record to sustain the charges, in any circumstances the disciplinary authority cannot go beyond the record and inflict the punishment based upon the charges which was not part of the memo of charge. To support the aforesaid contention, heavy reliance has been placed on a decision rendered by the Apex Court in the case of ***Laxmi Devi Sugar Mills Limited vs. Shri Nand Kishore Singh [AIR 1957 SC 7]***. Reliance has also been placed on the decisions rendered in the case of ***M. V. Bijlani vs. Union of India & Ors. [ (2006) 5 SCC 88]*** and ***Narinder Mohan Arya vs. United India Insurance Co. Ltd. & Ors. [(2006) 4 SCC 713]***.

8. It is also urged that with respect to the same charges other Nazir(s) of different Blocks were also subjected to departmental proceeding with same and similar charges. However, they have finally been reinstated after interference made by this Court and thus obvious discrimination has been



caused. Malafide is also writ large, in sum and substance irregularities were found at the hands of the Block Development Officer, but the petitioner and others, who were subordinate employees in different blocks offices have been made the scapegoat and put to disciplinary proceeding. So far the Block Development Officers of different Block are concerned, they were also subjected to departmental proceeding and they were also inflicted with the punishment of dismissal; their orders of dismissal have been set aside and they were also reinstated in service. On the point of discrimination, reliance is placed on a decision of the Apex Court in the case of ***Tata Engineering & Locomotive Co. Ltd. v. Jitendra Prasad Singh & Anr. [(2001) 10 SCC 530]***.

9. On the other hand, learned Advocate for the State vehemently refuted the contentions of the learned Senior Advocate for the petitioner and submissions has been made that in any circumstances, the petitioner cannot be exonerated of the charges for the simple reason that while he was holding the post of Nazir had failed to bring notice to the senior officers with regard to the irregularities committed at the hands of the Block Development Officer. Had the petitioner been vigilant in his duty and bring the entire facts to the notice of the senior



authorities, the State might not have suffered from the loss. There is specific allegation that the petitioner along with others instead of depositing the amount of scheme in the Nationalized Bank or the Post Office as per the guidelines of the Central/Government, deposited in Dehti PACS and by this way they misused the funds.

10. This Court has anxiously heard the learned Advocates for the respective parties and also meticulously perused the materials available on record.

11. There is no confrontation to the facts that in the earlier round of litigation when the challenge was made to the order of dismissal, the same was set aside on account of failure on the part of the disciplinary authority in exercising his power under Rule 18 of the CCA Rules, 2005. The enquiry report based upon which the disciplinary authority inflicted punishment was also held to be based upon no evidence and in such circumstances, highlighting the infirmities in the procedure leading to miscarriage of justice, the Court set aside the order of dismissal and relegated the matter to the disciplinary authority to take a final decision with reference to the materials available on record before the Enquiry Officer. The Court also reminded the respondent authorities that other persons who have also been



made accused in the same transaction have been granted reliefs under various orders. Notwithstanding, the facts and law crystallized by the Bench of this Court, the disciplinary authority again failed to exercise his jurisdiction under Rule 18 of the CCA Rules, 2005. To utter surprise, the disciplinary authority at one hand accepted the decision that there is no evidence on record before the Enquiry Officer to sustain the charge, but on the other hand proceeded beyond the scope of the charges and inflicted punishment by holding the petitioner guilty of negligence and failed to bring the facts of infirmities committed by the Block Development Officer to any superior authority, which was not even the charge for which the petitioner was proceeded. *Prima facie*, the finding returned by the disciplinary authority is *non est* and based upon extraneous consideration and beyond the imputation/charge.

12. The Hon'ble Supreme Court in ***Laxmi Devi Sugar Mills Limited*** (supra) through Justice Bhagwati held that the charge sheet which was furnished by the employer to the worker formed the basis of the enquiry and the employer could not be allowed to justify its action on any other grounds than those contained in the charge sheet. The employee not having been charged with the acts of insubordination which would have



really justified the employer in dismissing him from its employ, he should not take advantage of the same even though these acts could be brought home to the worker.

13. In the case of *Narendra Mohan Arya* (supra), the Apex Court has reminded that the Enquiry Officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding, which was not the subject matter of the charges, is wholly illegal and if the same has been done, the Writ Court is entitled to interfere with the finding of the fact of any Tribunal or authority in certain circumstances.

14. Similarly, in the case of *M. V. Bijlani* (supra), the Court has warned the authority that while exercising the power of disciplinary authority he cannot take into consideration any irrelevant fact or refused to consider the relevant facts. Any enquiry into the allegation in respect of which the delinquent officer had not been charged with has been held to be improper.

15. In the case in hand, this Court finds that the finding of the disciplinary authority is based upon *non est* charge of negligence and failed to inform the superior authority, which was not at all the part of the memo of charge. This Court also noticed that the disciplinary authority also failed in his duty in not considering the submission of the petitioner which is



based on parity.

16. It is apprised to this Court that one Ambha Prasad Yadav, who was also subjected to similar departmental proceeding and inflicted with the punishment of dismissal, has approached this Court in CWJC No. 7899 of 2010. This Court vide order dated 08.02.2010 on being found the order of punishment unsustainable quashed the same with liberty to the authorities to proceeding in the matter, if he so desires. The said Amba Prasad Yadav was reinstated in service and with all consequential benefits and he has not been proceeded further. Similarly one Pradeep Kumar @ Pradeep Kumar Yadav, who was also holding the post of Nazir, Araria Block had been subjected to departmental proceeding with same charges and he was also inflicted with the punishment of dismissal which order also came to be set aside by a Bench of this Court in CWJC No. 6897 of 2011 and the matter is remanded to the Enquiry Officer for recording his finding of guilt or otherwise in respect to the three charges. However, he was also reinstated with all consequential benefits.

17. Trite it is that the uniformity is not only the hallmark of the courts and the judicial authority but also of the quasi judicial authority; the rule of law demands that equals



should be treated equally. Treating equals equally is a cornerstone of fairness and justice. It ensures that people are not unfairly discriminated and given preferential treatment based on arbitrary factors. The reliance placed by the petitioner on a decision rendered by the Hon'ble Supreme Court in the case of ***Tata Engineering & Locomotive Co. Ltd.***(supra) also finds substance and covers the issue; while highlighting the decision rendered in the case of ***Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut & Ors. [(1984) (1) SCC 1]*** the Court held that if the delinquents are facing identical charges, they should be subjected to identical punishment and exoneration but singled out any delinquent would be denial of justice. It is the admitted position that the identically situated persons who were also charged with similar imputation, they have been reinstated with all consequential benefits on account of interference either made by this Court or the Appellate Authority but in case of petitioner, discrimination is meted out.

18. On all these counts, this Court finds that the petitioner has made out a good case for interference in the impugned order dated 28.12.2018 issued under the signature of the Director Rajbhasa (Urdu Directorate), Government of Bihar, Patna. Accordingly, the impugned order dated 28.12.2018



stands set aside. On account of the impugned order of punishment being set aside, any consequential order also stood cancelled and lost its efficacy.

19. The writ petition stands allowed with all consequential benefits which is to be extended to the petitioner, preferably within a period of 12 weeks from the date of receipt/production of a copy of this order.

20. Pending application(s), if any, shall also stands disposed off.

**(Harish Kumar, J)**

Anjani/-

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