

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.141 of 2022

In
Civil Writ Jurisdiction Case No.15728 of 2019

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Nilima Sinha W/o K.K. Sinha, Formerly Child Development Project Officer
Tillothu P.S.- Tillothu, District- Rohtas, A/p Mogalpura Jaggi- Ka Chauraha,
Nawab Bahadur Road, Nagla, P.S.- Kajekalan, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Chief Secretary to the Govt of Bihar Old Secretariat Patna.
3. The Cabinet Secretary cum Commissioner, Govt of Bihar Old Secretariat Patna.
4. The Secretary cum Commissioner to the Department of Social Welfare, Old Secretariat Patna.
5. The Joint Secretary to the Govt, Department Old Social Welfare Govt of Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Abninav Srivastava, Sr. Adv. Mr. Keshav Kumar Sinha, Adv.
For the State	:	Mr. Gyan Prakash Ojha (GA 7) Mr. Abhishek Singh, (AC to GA-7)
In-Person		MR. Ray Amar Nath Sahay, Under Secretary

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 19-04-2025

The appellant has assailed the order of the learned Single Judge dated 24.12.2021 passed in CWJC No. 15728 of 2019. Brief facts of the case are that the appellant - Nilima Sinha while working as a Child Development Project Officer (CDPO) at Tillothu in the District of Rohtas, certain alleged allegations were made against her to the extent that she was in the habit of demanding illegal



gratification from her own staff and so also allegations relating to insubordination to her staffs. On these issues, charge-memo was notified on 08.12.2009. Appellant had demanded certain documents in order to file an effective reply to the charge-memo on 28.06.2010 and it was not provided by the Disciplinary Authority. Resultantly, she has filed reply on 21.12.2010. It was not satisfied by the Disciplinary Authority. Consequently, enquiring officer and presenting officer were appointed to hold departmental enquiry on the alleged charges. The enquiring officer had submitted a report on 07.02.2011, holding that charges levelled against the appellant were proved. Disciplinary Authority on receipt of enquiring officer's report stated to have remanded on 15.03.2011 to continue the enquiry proceedings from the defective stage to the extent of examination of witnesses and cross-examination on behalf of the petitioner. Thereafter, enquiring officer submitted a fresh report on 01.04.2011. The Disciplinary Authority issued a second show cause notice on 29.04.2011. Thereafter, proceeded to impose the penalty of dismissal from service on 27.04.2012 after taking note of enquiring officer's report, second show cause notice read with the appellant's reply. Consequently, appellant invoked remedy before this Court and on some pretext matter was disposed of, resultantly, appellant preferred memorandum of appeal before the appellate authority on 15.03.2019 and it was rejected on 18.06.2019.



Thereafter, CWJC No. 15728 of 2019 was presented and it was dismissed on 24.12.2021 by the learned Single Judge. Hence, the present LPA.

2. Learned Counsel for the appellant submitted that from the inception, like framing of charge by the District Magistrate is without authority of law. Appellant being a class – II officer (Group – B Officer), the appointing authority is the State Government, whereas, the charge-memo has been framed by the District Magistrate. On this issue itself the entire proceedings are liable to be set aside.

3. The aforementioned contention supports with reference to government communication for the purpose of initiation of departmental enquiry dated 07.05.2010. In other words, State Government has taken a decision to initiate disciplinary proceedings against the appellant thereafter, District Magistrate had framed the charges on 08.12.2009 and communicated to the Director.

4. Further, learned senior counsel for the appellant submitted that list of witnesses are 1 to 13 and there is no separate list of documents. Witness nos. 10 to 12 are Aanganvari Sevika and witness no. 13 is husband of the appellant. In this backdrop, the enquiring authority proceeded to examine extraneous witnesses, who are not part and parcel of list of witnesses 01 to 13. Extraneous



witnesses are 09 to 19 and their written statements have been taken. Appellant was not permitted to cross examine despite demand on 05.05.2011.

5. It is further submitted that incorporating extraneous witnesses nos. 09 to 19 by the enquiring officer, he has not recorded in the day-to-day ordersheet that at the behest of presenting officer, enquiring officer permitted presenting officer to adduce evidence on behalf of newly added witness nos. 09 to 19 (Page 268 of CWJC). On the other hand, Principal Secretary is stated to have made a direct communication to the enquiring officer that enquiring officer is required to take note of additional evidence through newly added witness nos. 09 to 19 and it should have been rooted through presenting officer. It is also submitted that the enquiring officer has not recorded in the ordersheet that he is in receipt of the Principal Secretary's communication. Assuming that Principal Secretary has requested the enquiring officer to take additional evidence along with the examination and cross-examination of newly added witnesses such material should have been provided to the appellant and in not providing those material information resulting in violation of principle of natural justice. On these counts, impugned actions are vitiated.

6. It is further submitted that the learned Single Judge has committed error in noticing that conducting officer as also



presenting officer substantiated that appellant was provided opportunity of cross-examination and it has been refused such finding has been recorded in Para 12. It is contrary to original records relating to enquiry proceedings and in support of non-permitting the examination of witnesses, he also relied on affidavit dated 15.02.2023 filed by Mr. Prem Singh Meena, Secretary Social Welfare Department, Government of Bihar. At *para IV* in which he has admitted that during pendency of the consideration of appellant's grievance, enquiry report has been submitted on 01.04.2011. The learned Single Judge has committed error in not taking note of relevant original records on the other hand he is relying on only statement made by the respondents.

7. Per contra, learned counsel for the State – Respondent, resisted the aforementioned arguments that District Magistrate is permitted to frame charge memo. Ultimately, the final order is required to be passed by the Disciplinary Authority/Appointing Authority, otherwise the framing of charge till passing of final order need not be by Disciplinary Authority alone.

8. It is further submitted that appellant has been provided ample opportunity to cross-examine the witnesses and he has availed the same. In fact, once the enquiry officer's report submitted to the Disciplinary Authority, Disciplinary Authority remanded the matter to the enquiring authority to commence the



enquiry from the defective stage to the extent of examination and cross-examination of witnesses on 15.03.2011. Thereafter, on 24.03.2011, appellant refused to cross-examine the witnesses. Therefore, there is no infirmity in the order of the learned Single Judge. Hence, LPA is to be rejected.

9. Heard the learned counsel for the respective parties. It is un-disputed facts that appellant was charge-sheeted in a departmental enquiry for alleged allegations narrated in the charge memo and it was concluded in imposition of penalty of dismissal from service on 17.04.2012. Thereafter, there were certain litigations pending consideration which were stated to have been disposed. Consequently, appellant preferred appeal before the Appellate Authority on 15.03.2019 and suffered an order before the Appellate Authority on 18.06.2019. Thereafter, CWJC 15728 of 2021 was dismissed.

10. In brief, learned counsel for the appellant contended that charge-memo was not issued by the Appointing Authority/Disciplinary Authority. Appointing Authority/Disciplinary Authority to the appellant – CDPO is State Government. On the other hand, District Magistrate has passed the order. The same cannot be appreciated in view of the Supreme Court decision in the case of **State of Jharkhand vs. Rukma Kesh Mishra** [arising out of SLP (c) no. 19223 of 2024]



Therefore, the aforementioned contention of the appellant stands rejected.

11. Learned counsel for the appellant submitted that extraneous witnesses, who are not part and parcel of list of witnesses along with the charge memo issued on 08.12.2009 have been taken into consideration without providing list of additional witnesses read with adducing additional evidence pursuant to certain communication by the Principal Secretary to the enquiring officer. On this issue, we have specifically posed a question to the learned counsel for the State – respondent who is assisted by Under Secretary, Ray Amar Nath Sahay. They could not apprise this Court that enquiring officer has recorded communication of the Principal Secretary in respect of adducing additional evidence along with the examination of newly added witnesses. At the same time, we have to take note of yet another error to the extent that the Principal Secretary has no authority to directly communicate any material to the enquiring officer and it has to be rooted through only presenting officer, once the presenting officer is appointed to present the case on behalf of the department.

12. It is contended that learned Single Judge has committed error in not taking note of original records on the issue of examination and cross-examination of the witnesses. In fact, from the record, it is evident that newly added witnesses nos. 09 to



19 their written statements have been taken note of by the enquiring officer and he has not recorded their evidence in the manner known to the law. Further, appellant had demanded cross-examining the witnesses in writing, even though the same was noted, however, appellant was not permitted. On the other hand learned Single Judge has proceeded with reference to statement made by the conducting officer and presenting officer that appellant failed to cross-examine the newly added witnesses, such document is not existing in the original record. Even, later personal affidavit of the Secretary Social Welfare Department filed in the present LPA on 15.02.2023 in para IV, it is stated as under:-

“It is also submitted that the appellant had filed an application before the department on 25.03.2011, annexing photo copy of an application addressed to conducting officer, dated 24.03.2011 in which the appellant wanted to cross-examine all the witnesses one by one on next date. While the application dated 25.03.2011 of the appellant was under consideration by the department, the conducting officer submitted her final departmental proceeding report vide letter no. 877 dated 01.04.2011.”



13. In the light of the aforementioned material information, the learned Single Judge has erred in not appreciating the relevant records of the Disciplinary Proceedings.

14. The enquiring officer proceeded to examine extraneous witness nos. 09 to 19. Further, he has taken written statement and without recording their evidence and so also he has not permitted appellant to cross-examine those extraneous witnesses resultantly, there is a violation of principle of natural justice.

15. The Hon'ble Supreme Court in the case of **State of Karnataka & Anr. vs. Umesh** reported in (2022) 6 SCC 563 in para 22 examined the scope of judicial review by the Court in a Disciplinary Proceedings. Para 22 reads as under:-

“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 reappraise 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;

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

underline supplied

16. One of the principle in the aforementioned judgment is that violation of principle of natural justice. In not recording the evidence of the witnesses, newly added witnesses and further not permitting appellant to cross-examine would result in violation of principle of natural justice. That apart in yet another decision of the Hon'ble Supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank** reported in **(2009) 2 SCC 570** in which also it is held that non-examination of witnesses results in vitiation of disciplinary proceedings. On these counts, the appellant has made out a case so as to interfere with the dismissal order dated 27.04.2012, Appellate Authority's order dated 18.06.2019 and order of the learned Single Judge dated 24.12.2021 passed in CWJC 15728 of 2019 these orders are set aside.

17. Accordingly, the present LPA No. 141 of 2022 stands allowed.



18. Question of reinstating appellant is not warranted in view of the fact that during pendency of the present *lis*, she has attained 60 years. If she was in service, she would have attained age of superannuation and retired from service in the month of January, 2023. Therefore, the Appointing Authority – State Government is hereby directed to extend all monetary and service benefits from the date of dismissal till January, 2023 and proceed to calculate and disburse the monetary benefits. If the appellant is entitled to pensionary benefits, the same shall be extended and so also fixation of pension and, thereafter, arrears of pension and continue to pay pension on monthly basis, if she is otherwise eligible. The above exercise shall be undertaken by the State Government/Appointing Authority to the appellant within a period of six months from the date of receipt of this order, failing which appellant is entitled to litigation cost and it is quantified at Rs. 25,000/- (twenty five thousand).

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Ankit/sushma/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2025
Transmission Date	

