

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.285 of 2024
In
Civil Writ Jurisdiction Case No.21161 of 2011

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1. The Principal Secretary to the Governor of Bihar Governors Secretariat, Raj Bhawan, Patna, through Sanjay Kumar, 57 Yrs. (M), S/o Shri Ram Nandan Prasad Sinha, R/o A-6, Raj Bhawan Colony, P.S.- Sachivalay, Distt.- Patna.
 2. The Joint Secretary-Cum- Inquiry Officer, Governors Secretariat, Raj Bhawan, Patna.
 3. The Under Secretary-Cum- Presenting Officer, Governors Secretariat, Raj Bhawan, Patna.

... .. Appellant/s

Versus

1. Prakash Parewa Son of Sri Nanak Chand Parewa Resident of B- 292, 293 Raghubir Nagar, P.S.- Khayala, New Delhi.
2. The State of Bihar, through the Principal Secretary, General Administrative Department, Government of Bihar, Patna.
3. Shri Afjal Ammanullah, Son of Late Nehal Amanullah Resident of 133, Patliputra Colony, Patna.
4. Shri Sudhir Shrivastava, Fathers Name Not Known to the petitioner Resident of Himgiri Apartment, West Boring Canal Road, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Amish Kumar, Advocate Mr. Krishna Chandra Jha, Advocate Mr. Prabhakar Thakur, Advocate
For the Respondent/s	:	Mr. Mrigank Mauli, Sr. Advocate Ms. Chitra Dwivedi, Advocate Mr. Sanket, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

10 09-12-2025 A small but frequent question arises in the instant

appeal. The respondent was admittedly got service in the

Governor's Secretariat and it is not in dispute that the petitioner



was engaged on a daily wage basis in the Governor's Secretariat on 04 March, 1989 without production of any kind of proof of identity or residential certificate or educational qualification in the name of "Prakash Parewa". Subsequently, he got confirmation and promotion in the name of 'Prakash Parewa'. When the respondent authority permitted to produce educational qualification certificates then the petitioner produced educational certificate in the name of "Prakash Chand" and he has also filed an affidavit on 02 September 1983 that he changed his name from "Prakash Chand" to "Prakash Parewa". The said affidavit was followed by a paper publication on 17.4.1994, stating, *inter alia* that "Prakash Chand" and "Prakash Parewa" is the same and identical person.

2. After detection of such anomaly in the name of the incumbent in the year 2011, a departmental inquiry initiated in the year 2011, though the first show-cause was served upon the petitioner in the year 1993.

3. The petitioner/respondent herein, filed writ petition before the learned Single Judge for quashing the order contained in Memo No. 1436 dated 10 May 2011 issued under the signature of respondent no. 2 and quashing the inquiry report dated 19th April 2011 submitted by the respondent no. 3. The



learned Single Judge on due consideration of facts and circumstances of the case and the law laid down on the issue refused to uphold the proceedings initiated *vide* 1436 dated 10 May 2011 and inquiry report dated 19 April 2011 was also quashed and set aside. The Principal Secretary to the Governor's Secretariat and his subordinate officials have filed the instant appeal under Clause 10 of the Letters Patent challenging the finding made by the learned Single Judge in CWJC No. 21161 of 2011.

4. The learned counsels for the parties have made their respective submissions. They have also submitted written notes of arguments.

5. According to the learned Single Judge, quashing and setting aside the order dated 19 April 2011 cannot close the departmental proceeding to its finality, on the other hand, the departmental proceeding ought to have been directed to be carried out from the point from where anomaly were detected by the learned Single Judge. In support of his contention, the learned Advocate on behalf of the appellant refers to a decision of the Hon'ble Supreme Court in the case of ***Anant R. Kulkarni v. Y.P. Education Society***, reported in ***(2013) 6 SCC 515*** wherein it was held by the Hon'ble Apex Court that once the



court sets aside an order of punishment on the ground that the inquiry was not properly conducted, the court should not severely preclude the employer from holding the inquiry in accordance with law. It must remit the case concerned to the disciplinary authority to conduct the inquiry from the point that it stood vitiated, and to conclude the same in accordance with law. On the same point further reference to a Constitution Bench's decision in the case of *ECIL v. B. Karunakar*, reported in *(1993) 4 SCC 727* and an unreported judgment passed by a Co-ordinate Bench in **LPA No. 1324 of 2019** on 20 February 2025, **Yugul Kishore Singh Vs. The State of Bihar** through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna and others.

6. The learned Advocate on behalf of the private respondent, on the other hand, refers to the penultimate paragraph of Charge no. 2. The said paragraph runs thus:-

"It is further pertinent to state that as soon as the discrepancy in the name of the undersigned was detected by the department at the time of opening of the service book, the matter was inquired into thread bare and the relevant documents were sought for by the governor's Secretariat both for confirming the date of birth of the



undersigned as well his identity from the University of Delhi as well as the CBSE. In response to the queries made by the Secretariat, the authorities of the University of Delhi inter alia sent a copy of the Application for admission dated 19.10.1985 submitted to the University by the undersigned and a copy of the examination from submitted by the undersigned. The said documents were duly considered at the Governor's Secretariat and it was only thereafter that the name "Prakash Parewa" was approved as the changed name of "Prakash Chand" as shall be manifest from a persual of the note sheet of file No. Estt. 73/89(iii) from the dte 15.04.95 to 21.4.95."

7. Thus, in the year 1995 admittedly the respondent was claiming that he was actually Prakash Parewa and not Prakash Chand on the basis of his academic certificates issued by the CBSE as well as University of Delhi.

8. It is pointed out by Mr. Mrigank Mauli, learned Senior Advocate on behalf of the respondent that the charge-sheet was served to the respondent in the year 2010, the above-mentioned file dated 15.04.1995 to 21.4.1995 was never produced before the inquiry officer.

9. Next, he refers to the order sheet of the inquiry



proceedings from 28th November 2011. It is pointed out by the learned senior counsel that in the order dated 28th November 2011 and even before the said date in all orders there was counter signature of the delinquent employee, however, the order dated 18.02.2011 fixing the next date of inquiry proceeding on 25th March 2011 and the order dated 25th March 2011 wherein, the inquiry proceeding was closed and the date was fixed for passing of the order were not signed by the respondent which amply shows that the said orders and the closer of inquiry were passed behind the back of the respondent, therefore, the respondent prayed for supply of a copy of the order passed on 18th February 2011 by a letter dated 23rd March 2011. The respondent, however, was not produced with the said orders. Thus, it is contended on behalf of the respondent that the inquiry proceeding is absolutely wrong, arbitrary and contrary to the record of the department because of the fact that the respondent was accepted as "Prakash Parewa" in the year 1995 itself.

10. It is also pointed out by Mr. Mauli, learned senior counsel for the respondent that the delinquent employee retired from service with effect from 31st October 2024 during the pendency of the appeal. A question arose as to whether on his



retirement the inquiry proceeding could have been converted to disciplinary proceeding under Rule 43-b of the Bihar Pension Rules. Rule 43-b of the Bihar Pension Rules runs thus:-

"43-b. The [Appointment authority of the post held at the time of retirement] further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement."

11. On plain reading of the provision suggests initiation of disciplinary proceeding even against a retired employee when a gross pecuniary loss is caused to the Government owing to the payment of pension legally and the Government requires recovery of such money or the money was subjected to grave misconduct or to have caused pecuniary loss to the Government by misconduct or negligence during his service.



12. The initiation of disciplinary proceeding against a retired employee came up for consideration in ***Radha Raman Sharma v. State of Bihar***, reported in ***(2004) 13 SCC 787***. The Hon'ble Supreme Court in the aforementioned decision refers to a proviso in the following words:-

"Provided that-

a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with sanction of State Government.

(ii) Shall be in respect of an event which took place not more than four years before the institution of such proceeding; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the



procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) judicial proceeding, if not instituted while the government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c), the Bihar Public Service Commission, shall be consulted before final orders are passed."

13. In the instant case, no allegation against the respondent has been made to the effect that he was guilty for gross pecuniary loss or gross misconduct.

14. The only issue was that the respondent was "Prakash Chand" but he impersonated himself as "Prakash Parewa". The issue was settled by the appellant authority in the year 1995. The name of the respondent was recorded in the service book as Prakash Parewa. The same name was found in the acquaintance roll and all documents relating to his service.



Subsequently, in the year 2010, no additional document could be found against the respondent to lead the appellant authority to initiate a departmental proceeding and to relieve him off.

15. The learned Advocate on behalf of the appellant states that the respondent may be penalized under Rule 139 of Bihar Pension Rules. Rule 139 speaks about non-payment of full pension where service of an incumbent is found to be not thoroughly satisfactory.

16. No such charge has been made against the respondent, therefore, we do not find any merit in the instant appeal.

17. The instant appeal is therefore, dismissed on contest, however, there shall be no order as to cost.

(Bibek Chaudhuri, J)

(Dr. Anshuman, J)

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