

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17164 of 2024

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Gajendra Kumar Son of Gautam Singh, Resident of village- Tikabigha, P.S. Bodhgaya, District- Gaya.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Home Secretary, Government of Bihar, Patna.
3. The District Magistrate-cum-Chairman, Gaya, Bodh Gaya Temple Management Committee, Bodh Gaya.
4. The Secretary, Bodh Gaya Temple Management Committee, Bodhgaya.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. P. N. Shahi, Sr. Advocate Mr. Bibhuti Narayan, Advocate Mr. Aman Raj, Advocate Mr. Priya Ranjan, Advocate
For the BTMC	:	Mr. Ashok Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

3 07-10-2025 Heard learned Senior Counsel for the petitioner and

learned counsel for the State.

2. The petitioner has moved this Court for the

following reliefs:

“(i) For issuance of writ/ writs, order/orders, direction/directions including writ in the certiorari for quashing the order contained in Memo No. 326/ BTMC /23 dated 16.09.2023 issued by the District Magistrate cum-Chairman Bodhgaya Temple Management Committee Respondent No. 3 whereby and whereunder the petitioner has been dismissed from service.

(ii) For a direction order or writ in the



nature of mandamus commanding the concerned respondent authorities under the BTMC to take steps towards allowing rejoining of the present petitioner against the post of computer operator cum- PA 2 Secretary in the services of the BTMC alongwith all consequential benefits.”

3. The petitioner was working as a computer operator and was an employee of the Bodhgaya temple Management Committee, having been appointed initially as a daily wages worker and subsequently as a regular worker. The petitioner was regularised against sanctioned regular post vide office order dated 10.01.2009.

4. The present disciplinary proceedings resulting in the termination of service of the petitioner, emanates from the complaint preferred by one Neeraj Kumar, the District President of Bihar Sarmjeevi Journalist Union, New Godown, Gaya which was submitted on 07.03.2023, wherein altogether ten allegations were leveled against the present petitioner. Pursuant thereto, a three membered committee was constituted on 26.03.2023.

5. It is the submission of the learned Senior Counsel for the petitioner that the aforementioned committee has exonerated the petitioner of all charges vide their report which was also sent to the District Magistrate-cum-Chairman



BTMC arrayed as respondent no. 3 herein vide Memo No. 70 dated 01.07.2023, however since the tenure of the incumbent Secretary had lapsed and a new committee was subsequently constituted by the State Government. The new Secretary assumed charge on 11.08.2023 and merely after joining and assuming the charge, a fresh committee to enquire into the allegations against the petitioner was re-constituted, whereby the aforesaid second Committee found three charges to be proved and the remaining charges were not proved.

6. A show cause was issued to the petitioner on 05.09.2023, and a reply thereto was submitted by the petitioner on 06.09.2023. Subsequently, vide order dated 16.09.2023, the petitioner was dismissed from service.

7. The learned Senior Counsel for the petitioner has submitted that the order of dismissal from service was passed without duly considering the submissions made by the petitioner in his response to the show cause notice and as such the order of dismissal is unsustainable. It is also categorically argued by the learned Senior Counsel for the petitioner that additional charges have been added, subsequently by the newly constituted second inquiry committee headed by the successor Secretary of the Committee. It is argued that conducting a



second inquiry by the subsequent inquiry committee by essentially the very same committee, save and except one member, i.e., the successor Secretary, is bad and unsustainable as having been hit by the principle of waiver and estoppel. Once the inquiry committee had exonerated the petitioner of all charges and also communicated the same to the respondent no. 3, vide Memo No. 70 dated 01.07.2023, the subsequently constituted inquiry committee could not have re-examined and then arrived at a finding adverse to the petitioner, particularly when the first report had exonerated the petitioner of all charges. Such re-examination by the subsequent committee without assigning any cogent reasons for their difference with the first report is arbitrary and therefore unsustainable.

8. It is argued that the charges 1 and 4 which are found to be proved against the petitioner by the subsequent inquiry committee, have already been examined by the earlier committee at length. Further, so far as charge no. 12, it is argued that, this particular charge had been added subsequently by the newly constituted committee and was not before the earlier committee. Even on these three charges, which have been found to be proved by the joint committee, it is argued on behalf of the petitioner that the responses submitted by the petitioner had not



been duly considered and the findings of guilt have been arrived, without assigning any cogent reasons.

9. Learned Senior Counsel for the petitioner has submitted that the petitioner has been terminated without hearing the petitioner only after considering the reply to the show cause. Lastly it is argued that the enquiry of the committee is vitiated since, no cogent evidence has been adduced and proved. Mere production of a document could not stand on its own to arrive at a finding of guilt against the petitioner. In this regard reliance has been placed on the decision of the Hon'ble Supreme Court in the case of ***Roop Singh Negi vs Punjab National Bank***, reported as ***(2009) 2 SCC 570***.

10. A counter affidavit has been filed on behalf of the answering respondent no. 3.

11. Learned counsel for the Bodhgaya Temple Management Committee also accepts that the petitioner was not heard but only on the basis of show cause reply, he has been terminated.

12. The petitioner has been terminated from service i.e., he has been inflicted with the maximum punishment without even being given an opportunity of being heard. There



is also no reason assigned as to what prompted the respondent authorities to impose the maximum punishment.

13. It is a settled position of law that this Court cannot sit or act as an appellant Court to reassess or reexamine the evidence nor can this Court interfere merely on the ground that an alternative view is possible based on the records of the case. The only consideration before this Court is to the strict adherence to the principles of natural justice and that the procedure is fair and findings thereupon are based on evidence adduced therein.

14. The Hon'ble Supreme Court in the case of Roop Singh Negi (Supra) had held 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 the 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 manner that no evidence was left.

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19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have



*jurisdiction to interfere in the matter. **This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record. ...***

15. It is settled proposition of law that the findings in a departmental proceedings are quasi-judicial in nature and must satisfy the principles of natural justice. The findings of the committee must reasonably rest upon cogent evidences, oral or documentary. This ensures that the process is not arbitrary or unreasonable. In the inquiry, mere production of documents is not enough. The contents of the documentary evidence has to be proved by examining witnesses. In the present case, from the perusal of the records it appears that not a single witness has been examined in support of the charges levelled against the petitioner.

16. Considering the fact that the enquiry report is based only upon mere production of documents without duly proving the contents thereof and no witnesses were examined by the committee and a major penalty of dismissal from service has been inflicted upon the petitioner, therefore, I am of the view that the termination of the petitioner is illegal as it has been done in complete violation of the principles of natural justice. Also before passing the termination order, the petitioner ought to have been heard and his submissions ought to have been duly



considered.

17. In view of the above, this application is allowed.

18. The impugned order dated 16.09.2023 is hereby quashed.

19. The concerned respondent authority is hereby directed to forthwith reinstate the petitioner.

P. Kumar

(Sandeep Kumar, J)

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