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**(2021) 10 PAT CK 0019**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 24171 Of 2018

Rajive Nandan Mourya

APPELLANT

Vs

State Of Bihar Bihar

RESPONDENT

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**Date of Decision:** Oct. 8, 2021

**Acts Referred:**

- Constitution Of India, 1950 - Article 226, 227
- Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 - Rule 17
- Indian Penal Code, 1860 - Section 420, 467, 468, 471

**Hon'ble Judges:** Mohit Kumar Shah, J

**Bench:** Single Bench

**Advocate:** Siyaram Shahi, Indu Bhushan, Sanjay Kumar, Sanjay Pandey

**Final Decision:** Dismissed

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**Judgement**

1. The present writ petition has been filed for quashing the order dated 30.07.2018 passed by the Under Secretary, Water Resources Department, Government of Bihar, Patna (Annexure-5), whereby and where-under the petitioner has been inflicted with the penalty of dismissal from service, as also the notification dated 7.8.2019, issued by the Under Secretary to the Govt., Water Resources Department, Govt. of Bihar, Patna whereby and whereunder the review petition filed by the petitioner has been rejected. The petitioner has also prayed for quashing of the enquiry report dated 22.10.2017. Consequently, it has been prayed for directing the respondents to pay all the consequential benefits for the period of suspension & dismissal.

2. The brief facts of the case are that the petitioner was appointed on the post of Assistant Engineer on 23.6.1987 pursuant to an advertisement

bearing Advertisement no. 93/85 issued by the Bihar Public Service Commission (hereinafter referred to as "the Commission", wherein it was

provided that those candidates, who fall under the reserved category of Scheduled castes and Scheduled Tribes of other States will be entitled for

reservation, if their caste of SC/ST has been notified in the State of Bihar by a presidential order. The petitioner belongs to the caste "Chamar"

and falls under the Scheduled Caste category, both in the State of Uttar Pradesh as also in the State of Bihar. The father of the petitioner was

inhabitant of Uttar Pradesh but he was posted in the State of Bihar for a very long time, being in the service of Indian Railways and had also

solemnised marriage with his wife belonging to the district Saran, now Siwan. The petitioner is stated to have studied in the State of Bihar till Class-8,

whereafter he had studied and completed his intermediate course from Kushinagar, U.P. and had then obtained Engineering degree from Gujarat.

3. It is the case of the petitioner that he had validly and legally joined service in the year 1987 on the post of Assistant Engineer, Water Resources

Department, Government of Bihar, Patna and then he was promoted to the post of Superintending Engineer. It is stated that a complaint was made by

the President of All India Equality Forum that the petitioner is by caste "Chamar" of Uttar Pradesh but he has been given promotion on the post

of Superintending Engineer in the State of Bihar, where-after the Principal Secretary, Water Resources Department, Government of Bihar, Patna had

cancelled the promotion of the petitioner vide notification dated 22.11.2007, which was challenged by the petitioner before this Court by filing a writ

petition bearing CWJC No. 16097 of 2007, but the same was dismissed vide order dated 4.3.2009. The petitioner had then challenged the said order

dated 4.3.2009 along with other similarly situated persons by filing Special Leave Petition bearing S.L.P. (Civil) No. 7854 of 2009. As far as the case

of the petitioner is concerned, the Hon<sup>ble</sup> Apex Court vide order

dated 25.8.2014 had remanded the matter of the petitioner back to the High Court for fresh consideration in view of the new plea taken by the

petitioner before the Honâ€™ble Apex Court that his case was that of involuntary migration due to employment of his father in the State of Bihar and

on account of him being born and brought up in the State of Bihar, resulting in him suffering the same disability particular to his caste. In such view of

the matter, the Honâ€™ble Apex Court had also directed the High Court to verify the resident and caste claim of the petitioner, by an appropriate

authority, before hearing the matter.

4. It appears that the case of the petitioner was then taken up by the learned Division Bench of this Court and vide order dated 23.6.2015, the

Secretary, Social Welfare Department was directed to arrange for verification and certification of the residence and caste of the petitioner and submit

a report with regard to the same within three months. Thereafter, the residence and caste of the petitioner was verified by the General Administration

Department through the District Magistrate, Patna and District Magistrate, Kushinagar, U.P., whereupon, the District Magistrate, Kushinagar had

submitted a report stating therein that the petitioner was permanent resident of Shyampur Hatwa, Post Shakhopar, Tehsil Karaya, District Kushinagar

(U.P.), his family is still joint and there is no partition of joint family property as also the petitioner had studied in the Intermediate College, Kushinagar

from 07.08.1973 to 30.06.1978. The District Magistrate, Patna had also reported that the petitioner, on the basis of false affidavit, had procured

permanent resident certificate dated 3.9.2014 as well as caste certificate dated 4.9.2014 by practising fraud and he is not a permanent resident of the

State of Bihar, hence the certificate, which was obtained by him by misrepresentation and fraud, has been cancelled.

5. The learned Division Bench had then by its Judgement dated 20.08.2020 passed in CWJC No. 16097 of 2007 had held that though the petitioner

remained in the State of Bihar for a long period, as his father was posted here but he obtained his caste certificate from U.P. in which his permanent

residence has also been stated to be in the District of Deoria (U.P.) and the same was never surrendered for issuance of caste/ residence certificate

within the State of Bihar whereas the District Magistrate, Kushinagar (UP) in his report has found the petitioner to be of permanent resident of

Kushinagar U.P., as such the petitioner cannot claim to be resident/ domicile of both U.P. as well as Bihar, thus, the learned Division Bench dismissed

the writ petition of the petitioner and did not interfere with the order dated 22.11.2007, reverting the petitioner back on the post of Assistant Engineer.

Nonetheless, liberty was granted to the petitioner to approach the Caste Scrutiny Committee.

6. It has also been stated that after disposal of the aforesaid writ petition by the learned Division Bench of this Court, an FIR bearing Gandhi Maidan

P.S. Case No. 266 of 2017 dated 13.5.2017, under sections 420, 467, 468 and 471 of the Indian Penal Code, was lodged against the petitioner on the

allegations of him having fraudulently got the caste and permanent resident certificates issued by the authorities at Patna. The petitioner was then

suspended vide order dated 06.07.2017 and a departmental proceeding was initiated against the petitioner vide memo dated 06.07.2017 and the memo

of charge in Prapatra-Ka, along with other documents were served upon the petitioner. Thereafter, the departmental enquiry had started, wherein the

petitioner is stated to have demanded certain documents but the same was not furnished to him. It is also submitted that neither documents were

exhibited nor witnesses were examined during the course of departmental enquiry to prove the guilt of the petitioner and finally enquiry report was

submitted by the enquiry officer, which is dated 31.10.2017, finding all the charges to have been proved qua the petitioner herein. The disciplinary

authority had then issued second show cause notice dated 7.11.2017, to which the petitioner had replied vide letter dated 8.12.2017. Thereafter, the

petitioner was again asked to submit reply to the second show cause notice dated 16.05.2018, whereafter the petitioner had filed his reply to the

second show cause notice on 30.5.2018, before the Principal Secretary-cum-Disciplinary authority, Water Resources Department, Government of

Bihar, Patna. The Under Secretary, Water Resources Department, Government of Bihar, Patna, vide notification dated 30.07.2018 has then inflicted

the punishment of dismissal from service upon the petitioner herein, after receipt of concurrence of the Bihar Public Service Commission, Patna and

approval of the proposed punishment by the Chief Minister, the departmental Minister and by the Cabinet. The petitioner had then filed a review

petition before the Principal Secretary, Water Resources Department on 21.8.2018, however, the same has been dismissed by a notification dated

7.8.2019 issued by the Under Secretary to the Government, Water Resources Department, Government of Bihar, Patna.

7. The learned counsel for the petitioner has submitted that a bare perusal of the enquiry report dated 31.10.2017 would show that neither any witness

was examined nor the documents were proved during the course of the departmental enquiry, hence it is submitted that the entire departmental

enquiry stands vitiated and is fit to be set aside. It is also submitted that Rule 17 of the Bihar Government Servants (Classification, Control & Appeal)

Rules, 2005 (hereinafter referred to as the C.C.A. Rules, 2005) has also been given a go-bye. The learned counsel for the petitioner has further

submitted that the present case is a case of no evidence. Lastly, it is submitted that the impugned order of punishment dated 30.7.2018 stands vitiated

in the eyes of law inasmuch as the same is a non-speaking order and moreover, the punishment imposed upon the petitioner is disproportionate to the

charges levelled against him.

8. Per contra, the learned counsel for the respondent State has submitted that it is an admitted fact that the petitioner had, by misrepresentation and in

a fraudulent manner, obtained a caste certificate and residential certificate from the authorities at Patna. It is further submitted that in light of letter

dated 28.09.2015 issued by the General Administration Department (Annexure-6 to the writ petition), the District Magistrate, Patna referred the

matter for verification of the caste Certificate and Residential Certificate to the Sub-Divisional Officer, Patna Sadar, Patna. Thereafter, the Sub-

Divisional Officer, Patna Sadar, vide letter dated 7.11.2015 wrote a letter to the Senior Deputy Collector, District General Section, Patna, stating

therein that the Circle Officer, Patna Sadar, had made an enquiry and sent the enquiry report of Rajaswa Karamchari, from which it is manifest that

the petitioner had fraudulently, on the basis of his affidavit, got the permanent residential and caste certificate issued and moreover, the petitioner is not

a permanent resident of Bihar, which is clear from the report (Annexure-9 to the writ petition). The District Magistrate had then, vide letter dated

7.11.2015, informed the Additional Secretary, General Administration Department, Bihar, Patna as also had enclosed the aforesaid letter dated

7.11.2015 of the Sub-Divisional Officer, Patna Sadar along with the enquiry report pertaining to caste certificate and Residential Certificate of the

petitioner (Annexure-10 to the writ petition). The Circle Officer, Patna Sadar vide letter dated 13.5.2017, had written to the S.H.O., Gandhi Maidan,

Patna to register an F.I.R. against the petitioner on the ground that the petitioner had fraudulently got the caste and permanent residential certificate

issued, enclosing various documents by way of proof and then Gandhi Maidan P.S. Case No. 266 of 2017 dated 13.5.2017 under sections 420, 467,

468 and 471 of the I.P.C. was registered against the petitioner (Annexure-12 to the writ petition). Thereafter, the Circle Officer, Patna Sadar had

informed the Sub-Divisional Officer, Patna Sadar that the Residential Certificate bearing no. 29273 dated 3.9.2014 and the Caste Certificate bearing

no. 28122 dated 4.9.2014 of the petitioner have been cancelled (Annexure-13 to the writ petition).

9. The learned counsel for the respondent State has further submitted that there is no lacuna as far as conduct of departmental proceeding is

concerned, hence this Court would not sit in appeal and re-appreciate the evidence afresh. In this regard it is submitted that the charge sheet was

issued against the petitioner vide memo dated 7.7.2017 and a departmental proceeding was initiated against him under Rule 17 of the C.C.A. Rules,

2005 and Shri Gorakh Nath, Additional Secretary, Water Resources Department, Bihar, Patna was appointed as the enquiry officer, whereas Shri

Ram Bilash Dubey, Executive Engineer, Planning and Monitoring Division-5 was appointed as the Presenting Officer and along with the said memo

dated 7.7.2017, entire enclosures i.e. Prapatra-Ka containing the memo of charge dated 6.7.2017, documents referred to in the said memo dated

7.7.2017, etc. were supplied to the petitioner. It is also submitted that the enquiry officer had, after observing the Principles of natural justice and

giving ample opportunity to the petitioner, had concluded the departmental enquiry and submitted the enquiry report dated 31.10.2017, whereafter a

second show cause notice dated 7.11.2017 was issued to the petitioner and after several reminders, the petitioner had submitted his reply dated

30.05.2018, which was considered by the disciplinary authority and then it was decided to impose punishment of dismissal from service and after

receiving concurrence of the Bihar Public Service Commission as also after obtaining approval of the State Cabinet, Chief Minister and the

Departmental Minister, the impugned notification dated 30.7.2018 was issued, inflicting the punishment of dismissal from service upon the petitioner.

10. I have heard the learned counsel for the parties and perused the materials on record from which it is clear that the petitioner has, by

misrepresentation and fraudulently, as also on the basis of a false affidavit, procured a permanent residential certificate dated 03.05.2014 as well as a

caste certificate dated 04.09.2014, although the petitioner is not a permanent resident within the State of Bihar. In fact, the learned Division Bench of

this Court, in the case of the petitioner himself, by a judgment dated 20.8.2020 passed in CWJC No. 16097 of 2007 has come to the conclusion that the

petitioner had obtained his caste certificate from Uttar Pradesh in which his permanent residence has also been stated as District of Deoria, U.P.,

hence he could have applied for issuance of caste certificate within the State of Bihar only after cancelling his caste certificate, issued from the State

of U.P., however, without cancellation of the earlier caste certificate or for that matter the earlier residential certificate, the petitioner could not have

got the caste/ residential certificate issued from the State of Bihar inasmuch as the petitioner cannot claim to be resident/ domicile of both U.P. as

well as the State of Bihar. In this regard, it would be relevant to reproduce the relevant paragraphs of the judgment dated 20.08.2020 passed by the

learned Division Bench of this Court in the case of the petitioner i.e. in CWJC No. 16097 of 2007 herein below:-

In view of order passed by Apex Court, this court by order dated 23.06.2015, directed the Secretary Social Welfare Department to arrange for

verification and certification of the residence and caste of the writ petitioner within three months. Pursuant to said direction, the residence and caste of

petitioner was verified by the General Administration Department Govt. of Bihar through District Magistrate, Patna and District Magistrate,

Kushinagar, Uttar Pradesh. District Magistrate, Kushinagar, Uttar Pradesh in his report has stated that petitioner is permanent resident of Shyampur

Hatwa, Post Sakhopar, Tehsil Karaya District Kushinagar (U.P.). Family is still joint and there is no partition of joint family property. Principal Budha

Intermediate College, Kushinagar, has certified that petitioner was a student of this institute from 07.08.1973 to 30.06.1978. The District Magistrate,

Patna has reported that petitioner on basis of false affidavit procured permanent resident certificate dated 03.09.2014 as well as caste certificate

dated 04.09.2014 by practising fraud and he is not a permanent resident within State of Bihar and certificates were obtained by misrepresentation and

fraud and same have been cancelled.

Since, pursuant to remand of this case by the Supreme Court on the limited ground to conduct an enquiry by the authorities in the State of Bihar with

respect to his involuntary migration as father of petitioner remain posted in State of Bihar and petitioner being born and brought up in Bihar whether

petitioner has become permanent resident /domicile of the State of Bihar or not.

The matter was enquired by the authorities of Bihar and it has been reported that petitioner is not permanent resident of Bihar as there was no

intention to permanently settle in the State of Bihar and he continues to be permanent resident of Uttar Pradesh. As such, benefit of reservation

cannot be extended to petitioner in promotion as he has not been found to be resident of Bihar. The certificate dated 16.10.1986 issued by D.R.M.

Samastipur (Employer of father of petitioner) has also certified that father of petitioner is resident of village -Bairiya, P.O. Kasiya, District -Deoria.

Every citizen of India has right to settle or reside in any part of the country. A citizen is domicile either by origin or by choice, however, one cannot

hold two domicile certificates at a time. Right to change the domicile is done by residing at the place of choice with intention of continuing to reside

there indefinitely. Unless proved, there is presumption against the change of domicile. The person who alleges he has to prove that intention is always

in his mind which can be inferred from any act, event or circumstances in the life of such person. In domicile of choice one domicile is abandoned and

another domicile is acquired.

Although petitioner, remained in the State of Bihar for a long period as his father was posted here, he obtained his caste certificate from U.P., in



which his permanent residence has also been stated as district of Deoria (U.P). Petitioner could have applied for issuance of caste certificate within the State of Bihar where he was residing alongwith his father for last many years had there been any intention to settle in Bihar. The caste certificate which includes his address and residence was never surrendered for issuance of caste/ residence certificate within the State of Bihar and the earlier caste/ residence certificate has not been cancelled as yet. The District Magistrate, Kushinagar (U.P) in his report has found petitioner to be a permanent resident of Kushinagar U.P., as such, petitioner cannot claim to be resident/domicile of both U.P. as well as Bihar.

For the reasons as stated above, this Court does not find any error or infirmity in the order dated 22.11.2007 passed by the authorities as contained in Annexure11, by which petitioner has been reverted back to the post of Assistant Engineer as benefit of reservation cannot be granted to petitioner in matter of promotion as he is not a resident of Bihar.

11. Now, coming to the arguments advanced by the learned counsel for the petitioner, this Court finds that the main thrust of argument, for assailing the impugned order of punishment dated 30.07.2018 as also the enquiry report dated 31.10.2017, is that the present case is a case of no evidence, inasmuch as neither any witness was examined nor any document was exhibited during the course of departmental proceeding, resulting in non-compliance of the provisions of Rule 17 of the C.C.A. Rules, 2005, consequently rendering the impugned order of dismissal dated 30.07.2018, illegal and nonest in the eyes of law. In this regard, this Court would refer to the documentary evidence annexed to the resolution dated 07.07.2017, by which departmental proceeding was initiated against the petitioner, and would deem it appropriate to reproduce the list of documents, which is annexed as

Annexure-17 to the writ petition, at Page No. 126 thereof, herein below:-

12. A bare perusal of the aforesaid documents produced as evidence during the course of departmental enquiry, also handed over to the petitioner herein and not rebutted by the petitioner as also forming the basis of the judgment dated 20.8.2020, passed by the learned Division Bench of this Court against the petitioner, leaves no room for any doubt with regard to the complicity of the petitioner in procuring permanent residential certificate dated

03.09.2014 as well as the caste certificate dated 04.09.2014, on the basis of a false affidavit produced by him as also by misrepresentation and practising fraud, leading to the said certificates being cancelled by the authorities at Patna. It is a matter of record that the petitioner has failed either to disprove the documentary evidence produced by the prosecution during the course of departmental enquiry or to produce any documentary or oral evidence to substantiate his innocence, hence this Court finds that the complicity of the petitioner is writ large from the records and he is guilty of the allegations levelled against him in Prapatra- ""Ka"" dated 06.07.2017, which can be found at page No.124 of the writ petition, wherein the petitioner has been alleged to have misutilized his post and entered into a conspiracy to submit a false affidavit for the purpose of procuring caste/ residential certificate by misrepresentation and in a fraudulent manner as also had engaged in undignified behaviour which is contrary to the provision contained in section 3 of the Bihar Government Servants Conduct Rules, 1976, apart from causing inconvenience to the department on account of his fraudulent behaviour, resulting in loss of Government money and time and further duping the government officials and procurong false certificates.

13. Considering the materials on record as also the aforesaid aspect of the matter, this Court is of the view that no infirmity can be found in the procedure followed either by the disciplinary authority or in conduct of the departmental enquiry and moreover, the conclusion reached at by the enquiry officer in his enquiry report dated 31.10.2017, cannot also be faulted with. Reference in this connection be had to a judgment rendered by the Honâ€™ble Apex Court in the case of Union of India & Ors. Vs. P. Gunasekaran, reported in (2015) 2 SCC 610, wherein it has been held that the High Court in exercise of its power under Article 226 & 227 of the Constitution of India, cannot venture into re-appreciation of the evidence or interfere with the conclusions arrived at in the enquiry proceedings, if the same have been conducted in accordance with law, or go into the reliability/adequacy of evidence or interfere if there is some legal evidence on which findings are based or correct error of fact, however, grave it may be.

14. From the records, it is apparent that there is no illegality or irregularity as far as the conduct of the departmental proceeding is concerned and in fact no such allegation has also been leveled by the petitioner, hence this Court would not re-appreciate the evidence or interfere with the conclusions arrived at in the enquiry proceedings or go into the reliability/adequacy of the evidence or correct error of fact, however, grave it may be, thus this Court does not find any reason to interfere with the punishment order dated 30.07.2018, as far as merits of the case is concerned.

15. Now, coming to the issue regarding the impugned order of punishment dated 30.07.2018 being an unreasoned order and the same not furnishing any cogent reason for coming to a conclusion so as to warrant infliction of punishment of dismissal from service, upon the petitioner, this Court finds that the impugned order dated 30.07.2018 has taken into account all the relevant aspects of the matter, including the enquiry report submitted by the enquiry officer dated 31.10.2017, the entire records of the departmental proceeding, the materials available on record, the reply of the petitioner to the second show cause notice, the recommendation of the Bihar Public Service Commission and the approval by the Cabinet, the Chief Minister and the departmental Minister regarding infliction of the punishment of dismissal from service, hence it cannot be said that the impugned order dated 30.07.2018 is an unreasoned or a cryptic order. It is needless to state that in view of the admitted position, as aforesaid, the disciplinary authority could not have arrived at a different conclusion than what has been recorded in the impugned order of punishment dated 30.07.2018.

16. As regards the contention of the petitioner to the effect that the punishment of dismissal is disproportionate to the allegations levelled, this Court finds that the said argument, is without merit. It is a settled principle of law that it is not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. Reference in this connection be had to a Judgment rendered by the Hon'ble Apex Court in the case of Union of India v. P. Gunasekaran, reported in (2015) 2 SCC 610. It is equally a settled law that the quantum of punishment is within the domain and discretion of the employer to impose

penalty looking to the gravity of charge and it should not be vindictive or unduly harsh. It should not be so disproportionate to the charge which shocks the conscience and should not be indicative of proof of biasness. Applying these guidelines to the facts of the case in hand, it is clear that the punishment of dismissal from service is far from disproportionate to the charges of misrepresentation and fraudulent act of obtaining a caste certificate and a residential certificate which have unanimously been proven against the petitioner, hence taking any other view would be an anathema to service jurisprudence.

17. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present case, hence, the same stands dismissed.