

(2021) 10 PAT CK 0023

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 5376 Of 2017

Birendra Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Oct. 25, 2021

Acts Referred:

- Constitution of India, 1950 - Article 226
- Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 - Rule 18(1)
- Prevention of Corruption Act, 1988 - Section 7, 13(1)(d), 13(2)

Hon'ble Judges: Chakradhari Sharan Singh, J

Bench: Single Bench

Advocate: Akhilesh Dutt Verma, Shally Kumari, Kameshwar Kumar

Final Decision: Allowed

Judgement

1. The petitioner has assailed, in the present writ application filed under article 226 of the Constitution of India, an order issued by Memo No.1162

dated 30.09.2014 (Annexure-11) passed by the Director, Primary Education, Government of Bihar, whereby he has been dismissed from service. His

appeal against the order of dismissal has been rejected by the appellate authority by an order issued vide Memo No.1160 dated 27.12.2016

(Annexure-13), which is also under challenge in the present application.

2. Briefly narrated, the facts of the case are that the petitioner, at the relevant point of time, was posted as Block Education Officer, Tharthari in the

district of Nalanda. A departmental proceeding was initiated against one Balwant Kumar, a Headmaster posted at Gauravchak Primary School,

Ekangarsarai, in which the petitioner was appointed as an enquiring authority. The said Balwant Kumar made an application on 02.08.2013 before the Superintendent of Police, Vigilance Investigation Bureau, with an allegation that the petitioner was demanding bribe of Rs.10,000/- for submitting a favourable report in the departmental enquiry. The petitioner submitted his enquiry report as an enquiring authority on 05.08.2013, holding the charges against the said Balwant Kumar (the complainant) proved. On the other hand, based on the complaint of the complainant, a trap was conducted by the Vigilance Investigation Bureau on 08.08.2013 leading to the petitioner's arrest on the allegation of accepting bribe. A criminal case was accordingly registered as Vigilance P.S. Case No.47/2013 for the offences punishable under Section 7/13(2) read with 13(1)(d) of the Prevention of Corruption Act. He was subsequently released on bail. During the pendency of the criminal case, the disciplinary authority decided to initiate disciplinary proceeding against the petitioner on the same allegation of the petitioner's conduct of having demanded and accepted bribe money from the complainant, which was the basis for lodging of the First Information Report, as is evident from the charge-sheet in "Prapatra-Ka" (Annexure-6 to the writ application). An enquiring authority was appointed to conduct the departmental enquiry and a presenting officer was appointed to present the case of the department in the departmental enquiry. There are five charges framed in the charge memo, all of which relate to the allegation of demand and acceptance of bribe. The charge memo did not contain any list of witnesses. A list of documents, on which the department intended to rely to establish the charges against the petitioner in the departmental proceeding, was supplied. Evidently, the complaint of the complainant, the order, whereby the petitioner was appointed as the enquiring authority in the departmental enquiry against the complainant, the order of the Deputy Superintendent of Police, Vigilance Investigation Bureau, for lodging of First Information Report, and a copy of the First Information Report, were the documents mentioned in the said list of documents. The petitioner submitted his written statement of defence denying the allegation before the enquiring authority on 09.04.2014. He asserted that he was not supplied all necessary documents for the purpose of submitting his effective

defence. He further asserted that he was maliciously implicated at the instance of the complainant, who had reasons to believe that the petitioner was going to submit his report in the departmental proceeding against the complainant. He is said to have sought for adjournment before the enquiring authority on the ground of illness on 21.04.2014. On 21.04.2014 itself, the enquiring authority submitted his report, which is at Annexure-8 to the writ petition. The enquiring authority held all the charges against the petitioner to have been proved. A copy of the report of the enquiring authority was supplied to the petitioner through letter dated 30.05.2014 issued by the disciplinary authority seeking the petitioner's comments thereon. The petitioner submitted his comments asserting that the findings of the enquiring authority, being without any evidence, should not be accepted. The disciplinary authority, however, rejected the petitioner's representation against the report of the enquiring authority and agreeing with the report of the enquiring authority, the disciplinary authority imposed the punishment of dismissal from service by the impugned order dated 30.09.2014. The petitioner preferred an appeal against the said order, which has been dismissed by the Principal Secretary, Education Department, Government of Bihar, by the impugned order dated 27.12.2016. The order of the appellate authority is also being assailed in this case.

3. In the counter affidavit filed on behalf of the State of Bihar it has been asserted that as the petitioner was caught red handed while taking bribe, he does not deserve any relief in the present proceeding on any technical grounds. It has also been asserted that corruption in public life is the greatest hurdle in promotion of the ethos of the constitution and development of nation and a person involved in corruption does not deserve any leniency on technicalities.

4. I have heard Mr. Akhilesh Dutt Verma, learned counsel for the petitioner and Mr. Kameshwar Kumar, learned G.P.17 for the State of Bihar.

5. Mr. Verma has submitted that evidently the charges against the petitioner in the departmental proceeding are based on the same set of facts on which criminal case has been instituted against him. He has contended that no evidence was led by the department against the petitioner during the

departmental enquiry to establish the main allegation against the petitioner that he was demanding money from the complainant to give a favourable report in the departmental proceeding against him nor there is any evidence to establish the charge that the petitioner had received any bribe.

Registration of First Information Report against the petitioner is the only basis for initiation of departmental proceeding against him and except for the complaint of the complainant and the papers leading to registration of First Information Report, no material was available on record of the departmental enquiry to support the charges against the petitioner. He has submitted that the complainant was not examined. The contents of the complaint of the complainant was not otherwise proved. No person present at the time when the petitioner was allegedly caught red handed was examined on behalf of the department to establish the said charge. No member of the vigilance team, which had laid the alleged trap was produced by the department in support of the charge. He has accordingly submitted that apart from the fact that there was absolutely no evidence adduced during the departmental enquiry, the petitioner apparently did not have any opportunity to cross examine the witnesses. Further, crucial witnesses have been examined. He has accordingly submitted that the findings recorded in report of the enquiring authority is apparently perverse. He has secondly submitted that pursuant to issuance of the charge-sheet, the petitioner had submitted his written statement of defence on 09.04.2014; 21.04.2014 was the date fixed for the departmental enquiry when the petitioner had submitted a request for adjournment on the ground of his illness. In hot haste, on 21.04.2014 itself, the enquiring authority submitted his perfunctory report without any evidence, holding all the charges against the petitioner to have been proved. He thirdly submits that the petitioner had given a detailed representation against the report of the enquiring authority before the disciplinary authority explaining as to why the said report should not be accepted and the charges should be held "not proved". The disciplinary authority, however, based on a perfunctory enquiry report, passed the impugned order dated 30.09.2014 imposing punishment of dismissal from service without any application of mind inasmuch as the said order does not at all disclose any application of mind over the petitioner's representation

against the report of the enquiring authority. He has further argued that the petitioner's appeal was also rejected by the appellate authority by an order dated 27.12.2017 on erroneous consideration that the petitioner could not mention any fact in his memo of appeal, which was not considered during the departmental enquiry and the grounds taken in the appeal were the same as taken in his written statement of defence. He has placed reliance on Supreme Court's decision in case of Roop Singh Negi vs. Punjab National Bank and Others, reported in (2009) 2 SCC 570, coordinate Bench decision in case of Vijendra Prasad vs. The State of Bihar and Others, reported in 2019(4) PLJR 1046 and decision rendered on 31.08.2021 in C.W.J.C. No. 7631 of 2016 (Mithilesh Kumar Vs. The State of Bihar and Others) in support of his argument that the impugned order imposing punishment of dismissal from service is illegal, arbitrary and in complete violation of principles of natural justice.

6. Mr. Kameshwar Kumar, learned G.P.17, has reiterated the stand taken by the State of Bihar in its counter affidavit and has submitted that considering the gravity of the allegation against the petitioner in the departmental enquiry, in the best interest of the administration, the disciplinary authority has correctly taken the decision to impose punishment of dismissal from service, which does not deserve interference by this Court in a proceeding under Article 226 of the Constitution of India, on technical ground.

7. On careful examination of the materials on record and the submissions advanced on behalf of the petitioner, I find substance in submission made on behalf of the petitioner. As has been noted above, the main allegation against the petitioner is of having demanded and accepted bribe for submitting favourable report against the complainant in a departmental proceeding, which was initiated against the complainant. All the five charges levelled against the petitioner indisputably relate to the said allegation and the petitioner's arrest by the Vigilance Investigation Bureau in that regard, leading to registration of First Information Report. Learned counsel for the petitioner is correct in his submission that the department relied mainly on the police papers in support of the allegation, which too were not proved. The letter issued by Memo No.3725 dated 08.07.2013, which has been

referred to in the list of evidence in support of charge No. 1 is the communication whereby the petitioner was appointed as enquiring authority in a departmental proceeding initiated against the complainant. The department relied on the complaint of the complainant though the complainant was not shown in the list of witnesses. As a matter of fact, no list of witnesses was supplied by the department along with the charge memo. Apparently, the department did not intend to establish the charge against the petitioner on the basis of any oral evidence. No oral evidence was in fact adduced by the department during the departmental enquiry. In the Court's opinion, the nature of allegation made in the charge, based on which the departmental proceeding was initiated against the petitioner, unless admitted, could not have been reasonably established even on the basis of preponderance of probabilities without any oral evidence.

8. Mr. Verma has rightly placed reliance on the Supreme Court's decision in case of Roop Singh Negi (supra). The Supreme Court has further held that charge of corruption against an employee has grave consequence of incurring punishment of dismissal from service as the only recourse, which must be proved to the hilt in a departmental proceeding. Reference in this regard may be made to decision in case of Union of India v. Gyan Chand Chattar, reported in (2009) 12 SCC 78 (see Paragraph 21).

9. Learned counsel for the petitioner has rightly submitted that the report of the enquiring authority is totally perfunctory. It has just recorded its finding in the finding column of the report without discussing at all the evidence available before him. He has simply reiterated the charge levelled against the petitioner in his finding. There is no discussion in the report of the enquiring authority. The enquiring authority has miserably failed to deal with the defence set up by the petitioner in his written statement of defence.

10. Further, the disciplinary authority has completely ignored to consider the petitioner's representation against the report of the enquiring authority. The said order does not disclose any application of mind at all. The order of the disciplinary authority imposing punishment of dismissal from service deserves interference on this ground also.

11. Furthermore, the order of the appellate authority is also unsustainable on the same ground of being non-speaking and unreasoned.

12. In view of the above noted discussions, in the Court's opinion, the finding of the enquiring authority holding the charges framed against the petitioner as proved is perverse being without any evidence. The order passed by the disciplinary authority agreeing with such finding is also illegal, arbitrary and, therefore, unsustainable for the same reason. Further, the impugned order of the disciplinary authority is vulnerable, the same being non-speaking and unreasoned.

13. Further, right of appeal is a valuable right. It is the duty of the appellate authority to deal with the grounds taken in the appeal by an appellant. The Supreme Court in case of Director (Marketing), Indian Oil Corpn. Ltd. v. Santosh Kumar, reported in (2006) 11 SCC 147, has emphasized the necessity of recording of reason in appellate order as absence of reasons amounts to non-application of mind. Similar view has been expressed by the Supreme Court in case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney, reported in (2009) 4 SCC 240.

14. For the reasons aforesaid, the impugned order of dismissal contained in Memo No.1162 dated 30.09.2014 (Annexure-11) passed by the Director, Primary Education, Government of Bihar, is set aside. The order of the appellate authority issued vide Memo No.1160 dated 27.12.2016 (Annexure-13) is also set aside.

15. Since the Court is interfering with the impugned order of dismissal from service on the ground that finding of guilt against the petitioner is based on no evidence, it is directed that the petitioner shall be required to be reinstated forthwith. He shall be entitled to all consequential benefits in terms of full back wages from the date of his dismissal till the date of his reinstatement by virtue of the present order. The respondents shall be required to proceed as if no order of dismissal was ever passed against the petitioner. Payment of back wages shall be subject to petitioner filing an affidavit before the disciplinary authority that during the period of dismissal he was not gainfully employed elsewhere.

16. However, the respondents shall be at liberty to pass appropriate orders in accordance with law depending upon the outcome of the criminal case

against him. Further, Rule 18(1) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 permits a disciplinary authority to remand the case to the enquiring authority for further enquiry and report, for the reasons to be recorded in writing. It will be open for the disciplinary authority to invoke the said provisions.

17. This writ application is allowed with the aforesaid directions and observations.

18. There shall, however, be no order as to costs.