

(2018) 02 PAT CK 0066

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13297 Of 2014

Sabir Ahmad

APPELLANT

Vs

State Of Bihar Through Principal Secretary And Ors

RESPONDENT

Date of Decision : 26-02-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Government Servant (Classification, Control And Appeal) Rules, 2005 — Rule 17, 18, 28(2)

Citation : (2018) 2 PLJR 269

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Sanjay Kumar Giri, Sanjay Kumar, K.P. Yadav, Umesh Kumar Roy

Final Decision : Allowed

Judgement

Heard learned counsel for the parties.

This writ petition under Article 226 of the Constitution of India has been filed for quashing the order of punishment dated 11.07.2013, issued under the signature of Special Secretary, Water Resources Department, Government of Bihar, Patna, by which petitioner has been awarded punishment of stoppage of two increments with cumulative effect and censure for the year 2009-10.

The petitioner was posted as Assistant Engineer (Civil) in Water Resources Department, Bihar in the year 1988. A disciplinary proceeding was initiated against the petitioner under Rule 17 of the Bihar Government Servant (Classification, Control & Appeal) Rules-2005 and memo of charge dated 05.01.2010 was served upon the petitioner and Sri Narendra Kumar, Superintending Engineer, Ganga Sone Flood Protection Circle, Mithapur (Patna) was appointed as enquiry officer and Sri Shailesh Kumar, Assistant Engineer, was appointed as presenting officer and petitioner was directed to submit his reply against the memo of charge within two weeks. As per memo of charge, when the petitioner was posted as Estimating Officer (Assistant Engineer) in the Irrigation

Division No. 2, Jamui, he submitted leave application for going home for the treatment of his wife, he went there and worked as polling agent of a candidate of PACCS election which was held on 16.10.2009 at Jhirwa Panchayat Bhawan of Uchkagaon Block of Gopalganj district and the same amounted to misconduct. He pressurized the Government officials deputed at the polling booth to caste bogus vote in favour of his candidate and for the said purpose, he caused disturbance in election process. He left the Headquarter without getting the leave sanctioned and sent his joining through speed post after release from jail.

The petitioner appeared before the enquiry officer on 02.02.2010 and sought adjournment for going through the documentary evidence. He requested the enquiry officer by letter dated 20.02.2010 to direct the Presenting Officer to supply him certain documents so that he could prepare his defense. The petitioner appeared before the enquiry officer on every date and requested for supply of required documents but no document was provided to him and ultimately petitioner submitted his written defense by letter dated 30.01.2012, in which he denied all the charges levelled against him. The petitioner submitted his reply in detail in which he stated that he is not a voter of PACCS, as such he cannot be appointed as polling agent and he had gone there with his wife as she is voter of PACCS and she wanted to vote, out of turn as she was ill, which caused some altercation with local villagers and both were sent to jail and was released on bail by C.J.M. Gopalganj on 21.10.2009. The disciplinary authority without issuance of any second show cause and supplying copy of the inquiry report, by order dated 11.07.2013 awarded major punishment of stoppage of two increments with cumulative effect and 'censure' for the year 2009-10 and the same was by the order of Governor of Bihar, issued under the signature of Special Secretary, Water Resources Department. The petitioner was acquitted in the criminal trial arising out of Uchkagaon P.S Case No. 150 of 2009 and he was acquitted in the said criminal case. Petitioner filed a revision application before the Governor of Bihar on 03.01.2014 in which he had given details of his written defense and also enclosed his order of acquittal in criminal trial and he had further submitted that no document as requested by him was provided to him nor any witness was examined in his presence and he was not given any opportunity to cross-examine the witness. He was never supplied copy of inquiry report and even second show cause notice was not issued to him before inflicting punishment on him, and his revision application was rejected in a most mechanical manner by order dated 03.07.2014, by the order of Governor of Bihar, issued under the signature of Additional Secretary, Water Resources Department, Bihar. The petitioner obtained a copy of the inquiry report dated 08.01.2013 under Right to Information Act vide letter dated 11.07.2014 issued by the Public Information Officer, Water Resources Department, Bihar, Patna. In the enquiry report, he was exonerated by enquiry officer from charge no. 4 and 5 and with regard to charge no. 1, 2 and 3, he opined that the same was subject to final outcome of criminal trial as those are based on the allegations leveled in the FIR. The petitioner being acquitted in criminal trial, as such charge no. 4 and 5

stood disproved and the enquiry officer had exonerated petitioner from charge no. 1, 2 and 3, as such nothing remains against the petitioner for which he could be punished for any misconduct. The disciplinary authority had disagreed with the finding of the enquiry officer and as such he was required under Rule 18 of Bihar Government Servant (Classification, Control & Appeal) Rules-2005, to issue second show cause notice giving tentative reasons for differing with the opinion of the enquiry officer but no second show cause notice was issued to the petitioner nor any tentative reason of the disciplinary authority differing with the opinion and finding of the enquiry officer was provided to him, as such the entire departmental proceeding is vitiated, as the mandatory provision of Bihar Government Servant (Classification, Control & Appeal) Rules-2005 was not followed while granting major punishment.

A counter affidavit has been filed on behalf of the respondents in which it has been stated that the petitioner remained in custody for the period from 16.10.2009 to 21.10.2009, and during the said period he was put under suspension vide departmental notification dated 27.11.2009. The departmental proceeding was initiated against the petitioner vide resolution dated 05.01.2010 under Rule-17 of Bihar Government Servant (Classification, Control & Appeal) Rules- 2005. Copy of memo of charge and evidence was given to petitioner to submit his written defense before the enquiry officer. Allegation in memo of charge was that the petitioner was appointed as polling agent in PACCS election on 16.10.2009. Although he was a Government servant, he put undue pressure on the voters to caste their vote in favour of his candidate. The petitioner left the Headquarter without obtaining permission of the competent authority and without getting the leave sanctioned. The petitioner participated in the departmental enquiry and submitted his written submission. The enquiry officer submitted the enquiry report by letter dated 04.01.2013, which was examined by the disciplinary authority and it was found that the inquiry officer did not gave any finding with respect to charges framed against the petitioner. However, on the basis of materials available on record, the disciplinary authority reached at the conclusion that the charges were proved and petitioner was awarded punishment. Against the said order of punishment, petitioner preferred revision under Rule-28(2) of the Bihar Government Servant (Classification, Control & Appeal) Rules-2005 on 03.01.2014 and the same was rejected vide order dated 03.07.2014.

After hearing learned counsel for the petitioner and learned counsel for the State, it is an admitted fact that no inquiry report was given to the petitioner and no second show cause notice was issued to him along with the inquiry report and tentative reasoning of disciplinary authority with respect to his differing with the findings of the enquiry officer, the whole proceeding becomes vitiated and as such the order of punishment cannot be sustained. There is flagrant violation of Bihar Government Servant (Classification, Control & Appeal) Rules-2005 while conducting the enquiry proceeding and the enquiry officer exonerating the petitioner of three charges and giving opinion that charge no. 4 and 5 will be

subject to result of the criminal trial and petitioner being acquitted by the criminal court, there was no occasion for imposing any punishment against the petitioner without giving a copy of the enquiry report and tentative reasons of disciplinary authority differing with the findings of the enquiry officer and giving liberty to the petitioner to meet the findings of disciplinary authority to convince him that the enquiry report by which he has been exonerated is correct and proper but no such opportunity was given to the petitioner, as such the order passed by the disciplinary authority as well as the revisional authority cannot be sustained and are set aside with all consequential benefits to the petitioner.

The writ petition stands allowed.