
(2012) 01 PAT CK 0126
In the Patna High Court
Case No : CWJC No. 11332 of 2006

Shri Nand Kishore Keshri

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2012) 2 PLJR 730

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Kamal Nayan Choubey and Ambuj Nayan Choubey, for the Appellant;
Sanjay Kumar No. 1 For the State, for the Respondent

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State. At the relevant time petitioner served as District Welfare Officer, Bhojpur. He filed this writ petition praying inter alia to quash the departmental proceeding initiated against him under Memo No. 1799 dated 21.4.2005, Annexure-6 as also to direct conclusion of the proceeding initiated against him under Memo No. 1814 dated 16.4.2004, Annexure-1. During the pendency of the writ petition petitioner has been served with the resolution of the Government bearing no. 2069 dated 12.9.2011, Annexure-A to the supplementary counter affidavit of respondent no. 2 dismissing him from service as the charges levelled by the District Magistrate, Bhojpur against him and forwarded to the Government under Memo No. 303 dated 28.1.2004 has been found proved by the Enquiry Officer under report dated 18.10.2005, Annexure-8.

2. It appears petitioner was earlier served with resolution of the Government dated 16.4.2004, Annexure-1 enclosing the charge-sheet dated 22.1.2004 drawn against him by the District Magistrate, Bhojpur in form "K" alleging disbursement of Rs. 31,44,835/- by him for payment of scholarship to the students of three colleges namely, Janta College, Lohai, Piro, Bhojpur, Co-operative College, Barap, Garhani and Mahatma Gandhi College, Lahrabad, Piro during the period between

13.5.1997-5.1.2000, which was not paid to the students and defalcated by the authorities. One of the three colleges namely Janta College, Piro was also found to be a non-existent institution. He is also alleged to have violated the Government instruction issued under the signature of the Secretary, Welfare Department bearing letter No. 5480 dated 10.10.1998 for ensuring proper disbursement and payment of scholarship amount to the students through account payee cheque drawn in the name of the students. Perusal of the said charge-sheet also indicates that the evidence relied upon in support of the charges are the report(s) of the Sub-Divisional Officer, Piro and District Accounts Officer, Bhojpur. Besides the report of the Sub-Divisional Officer and the Accounts Officer reliance in support of the charges was also placed on the contents of the F.I.R. of Nawada P.S. Case No. 47 of 2003, 144 of 2003, 240 of 2003 and 160 of 2003. List of the colleges was also relied upon to indicate that the cheques issued by the petitioner were received by the Assistant/Nazir. Having received the aforesaid charge-sheet petitioner submitted letter dated 22/25.5.2004, Annexure-4 to the Deputy Director, Headquarter-cum-Enquiry Officer requesting him to furnish the 36 annexures appended with the report of the Accounts Officer, Bhojpur. In the said letter petitioner further requested the Enquiry Officer to grant him copies of other seven documents including the order by which he deputed Rajdeo Singh, Sub-Divisional Welfare Officer in the district headquarter for making enquiry in connection with grant of scholarship. From the letter of the Deputy Secretary of the Welfare Department dated 17.7.2004, Annexure-K to the counter affidavit filed on behalf of respondent nos. 2 and 3, it appears that documents asked for by the petitioner under letter dated 22/25.5.2004 were directed to be issued to the petitioner.

3. It is submitted on behalf of the petitioner that in spite of the direction contained in the aforesaid letter dated 17.7.2004, Annexure-K documents asked for by the petitioner under letter dated 22/ 25.5.2004 and directed to be given to the petitioner under letter dated 17.7.2004 were not given to the petitioner and he had to submit his written defence dated 22.9.2004, Annexure-5 on the basis of his memory/ recollection. In last paragraph of the written defence dated 22.9.2004 it is stated that the same be treated as interim defence. Under resolution of the Government dated 21.4.2005, Annexure-6 the earlier Enquiry Officer was replaced by Ram Bujhawan Choudhary another Deputy Director, Headquarter as Enquiry Officer. Alongwith the resolution dated 21.4.2005 once again petitioner was served with the earlier charge-sheet dated 22.1.2004. Having received resolution dated 21.4.2005, Annexure-6 petitioner submitted written defence dated 26.9.2005, Annexure-7. Perusal whereof indicates that thereunder he referred to his earlier interim defence dated 22.9.2004, Annexure-5 and admitted receipt of the documents referred to in the charge-sheet, like the report of the Sub-Divisional Officer, Piro, District Accounts Officer, Bhojpur dated 24.3.2003, 7.11.2003 and the departmental letter dated 10.10.1998 alongwith other documents referred to in the charge-sheet. Further perusal of the said written defence, Annexure-7 indicate that petitioner never

asserted therein that scholarship amount was paid to the students of the three colleges as also about the existence of Janta College, Lohai, Piro though bald statement is made in the written defence that charges levelled against him have already been refuted in the interim written defence dated 22.9.2004, Annexure-5. Having stated such fact petitioner went on to state in the written defence that District Accounts Officer found in his report that irregularity in distribution of the scholarship amount was being committed by the predecessors of the petitioner who recommended for changing the distribution procedure. He further stated that in 1996 Welfare Officer Sri Binod Kumar Misra, Deputy Collector had obtained orders in the file from the District Magistrate to disburse the scholarship amount through cheque in favour of Principal of the college and to obtain utilization certificate from him after payment is made to the students. In the same file orders were passed by the Deputy Development Commissioner from time to time to disburse the scholarship amount through bearer cheques. In the same file notes were put up by the Incharge Assistant Sri Nirav Kant Ram giving the list of the colleges recommended for payment of scholarship to the students of the College together with the estimated amount which was required and approved by the Head Assistant. Petitioner further stated in paragraph-5 of his written defence that after grant of approval for payment of scholarship amount by him it was the duty of the Nazir to prepare the cheque and from perusal of the photo copy of the different cheques, it is evident that only few of the cheques were account payee. The job to issue account payee cheque is that of Nazir who kept the officer in dark and issued bearer cheque for disbursement of scholarship amount. Petitioner further stated in the said show cause that generally cheques are issued in the name of the office of the Principal and in such circumstances, payment of scholarship amount by the Bank to the bearer was negligence of the Bank. Petitioner also stated that on the reverse side of the cheque the signature of the payee has been identified by the Assistant Nirav Kant Ram. Petitioner has further relied on the contents of four numbers of First Information Report referred to in the charge-sheet lodged in the Nawada Police Station by the erstwhile District Welfare Officer, in which neither the petitioner nor his predecessors were made accused for the reasons given in different subparagraphs of paragraph-8 of the written defence and with reference to the F.I.Rs., it was submitted by the petitioner in his written defence that persons found guilty in connection with misappropriation of the scholarship amount are the concerned Principal, Bank employees who made payment, the Assistant Incharge Scholarship Nirav Kant Ram and Nazir welfare section. In regard to violation of the instructions of the department contained in letter no. 5480 dated 10.10.1998, it was submitted by the petitioner in his written defence that aforesaid letter was issued in October, 1998 but he does not remember as to when the same was received in his office and why no proposal was put up in file to implement the Government direction to change the procedure for payment of scholarship amount through cheque drawn in the name of the student. From perusal of aforesaid written defence of the petitioner dated 26.9.2005, Annexure-7 as also the interim defence dated 22.9.2004, Annexure-5 it does not

appear that he disputed the findings recorded against him by the Sub-Divisional Officer, Piro in his report bearing letter no. 398/C dated 24.3.2003 and that of the District Accounts Officer, Bhojpur in letter no. 1579 dated 7.11.2003 referred to in the charge-sheet on the basis of which the authorities alleged against the petitioner that the amount disbursed by him for payment of scholarship amount to the students of the three colleges was not paid to the students and misappropriated violating the instructions of the Government dated 10.10.1998 to pay the amount to the students through account payee cheque drawn in their name.

4. The Enquiry Officer considered the aforesaid written, interim written defence of the petitioner and with reference to the report of the Sub-Divisional Officer, Piro dated 24.3.2003 concluded that Janta College, Lohai, Piro is non-existent institution as in the building in which said college is said to have been established and functioning another private school was found functioning by the Sub-Divisional Officer, Piro on the date of his inspection of premises in question. With reference to report dated 7.11.2003 of the District Accounts Officer the Enquiry Officer found the petitioner and his predecessor District Welfare Officers did not discharge their duties in connection with disbursement of the scholarship amount in appropriate manner and were acting at the behest of the Assistant concerned as they neither made payment through cheque nor confirmed the receipt of scholarship amount from the students ignoring the Government instruction under letter no. 5480 dated 10.10.1998 to deposit the scholarship amount in the account of the college students either opened in the Bank or Post office. In the light of the aforesaid findings of the Enquiry Officer petitioner was held guilty of all the charges under report of the Enquiry Officer dated 18.10.2005 contained in Annexure-8.

5. Relying on the report of the Enquiry Officer petitioner was served with the second show cause notice dated 13.1.2006, Annexure-9 asking him to show cause as to why in the light of the findings recorded in the enquiry report he be not punished with major punishment. Petitioner submitted his reply dated 1.3.2006 Annexure-10. In paragraph-4 whereof he submitted that the report of the Enquiry Officer is wholly biased and has been submitted without considering the aspects, which were raised by him in his written defence. In paragraph-5 of the second show cause reply petitioner stated that documents called for by him under letter no. 304 dated 22.5.2004 were not served on him. In paragraphs-6 and 7 petitioner referred to the report of the District Accounts Officer and submitted that in the said report he alone has not been held guilty by the District Accounts Officer who expressed displeasure against all the erstwhile District Welfare Officers for having not maintained constant vigil in distribution of scholarship amount to the students of the colleges. With reference to the report of the Sub-Divisional Officer, Piro dated 24.3.2003 petitioner submitted that in Lohai village the college building exists in which at the time of inspection by the Sub-Divisional Officer, Piro school may have been functioning but there is no evidence to suggest that in the said building there is no college. In paragraph-8

petitioner raised the question whether selection, approval and payment of scholarship amount to the students is the sole responsibility of the District Welfare Officer. In paragraphs-9, 10 petitioner gave instances of the cheques issued in favour of Principal of the College for payment of scholarship amount to the students. In paragraph-11 petitioner explained non-compliance of the departmental instructions in letter no. 5480 dated 10.10.1998 and submitted that in the light of the instructions of the District Magistrate the procedure which was in vogue from before the receipt of instruction dated 10.10.1998 was continued ignoring the departmental instructions. Aforesaid show cause reply of the petitioner was considered by the competent authorities of the State at different level including the Bihar Public Service Commission and finally by the State Cabinet, whereafter impugned punishment notification dated 12.9.2011 was issued dismissing the petitioner.

6. Learned counsel for the petitioner has challenged the impugned notification dated 12.9.2011 on the ground that no enquiry, as is required in terms of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 was conducted, inasmuch as Enquiry Officer without examining the witnesses in support of the allegations held the petitioner guilty of the charges levelled against him. Learned counsel further submitted that it was incumbent upon the Enquiry Officer to have examined the authors of the report of the internal enquiry dated 24.3.2003 and 7.11.2003 referred to in the charge-sheet. In support of the aforesaid contention learned counsel for the petitioner relied on the judgment of the Hon"ble Single Judge of this Court in the case of Kumar Upendra Singh Parimar Vs. B.S. Co-Opt. Land Dev Bank Ltd. and Others, . He also relied on the judgment of the Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, and in the case of State of Uttar Pradesh and others vs. Saroj Kumar Sinha, reported in (2010)2 Supreme Court Cases 772 paragraphs 28, 29, 30. Counsel next submitted that authorities of the Government while directing enquiry against the petitioner violated the instructions of the Government contained in letter dated 27.4.1985, Annexure-12, which inter alia requires approval of the Chief Secretary for initiation of departmental proceeding for imposing major punishment against Government servant. In the instant case, according to the counsel for the petitioner before initiating departmental action against the petitioner no approval of the Chief Secretary was taken and for such non-approval the entire proceeding is vitiated. Learned counsel for the petitioner with reference to paragraph-9 of the writ petition further submitted that proper execution and monitoring of the scheme for payment of scholarship was not the sole responsibility of the petitioner. According to the learned counsel for the petitioner as per Government instruction district level Supervisory Committee was formed to monitor the scheme for distribution of scholarship amount. The Deputy Development Commissioner was the Chairman of the Scholarship Committee with others like Sub-Divisional Officer, District Welfare Officer were members of the Committee together with the elected representatives of the district. According to the

petitioner it was the duty of the District Level Scholarship Committee to supervise the scholarship scheme. Learned counsel further submitted that Sub-Divisional, Welfare Officer, Piro was also responsible for misappropriation of the funds allocated for payment of scholarship was, however, let off lightly under notification of the Government dated 18.7.2003, Annexure-3 withholding one increment and non-payment of full salary for the suspension period. Petitioner, however, has been visited with major punishment of dismissal.

7. Learned counsel for the State has opposed the prayer and submitted that petitioner being the Disbursing Officer for payment of scholarship amount to the students of the Government College, it was his duty to disburse the amount through account payee cheque in the name of the students but petitioner played into the hands of the Assistants serving in his office and without verifying the recommendations of the District Scholarship Committee disbursed the amount through cheques drawn in favour of the Principal of the College violating the specific instructions of the Government in letter no. 5480 dated 10.10.1998 to pay the amount through account payee cheque drawn in favour of the student payable in the account of the students opened either in the Bank or Post Office, which fact he himself has admitted in his second show cause reply that deviation of the aforesaid instructions dated 10.10.1998 was made under instructions from the District Magistrate. In support of the fact that deviation was made under instruction of the District Magistrate petitioner has not produced any document to suggest that District Magistrate directed him to ignore the Government instructions contained in letter dated 10.10.1998. Learned counsel for the petitioner, however, invited my attention to the notes of the District Magistrate dated 8.11.1996 at page 53 of the brief to follow the earlier procedure, which was in vogue until any irregularities are brought to light. Aforesaid note of the District Magistrate dated 8.11.1996 is much prior to the issue of instructions of the Government under letter no. 5480 dated 10.10.1998, as such, in the light of the prior note of the District Magistrate dated 8.11.1996 to continue the old procedure until irregularities are found petitioner could not have continued with the old procedure for payment of scholarship amount after receipt of the Government instruction dated 10.10.1998. Counsel for the State further submitted that the case law relied upon by the learned counsel for the petitioner has no application to the facts of the present case in view of the fact that in both the reported cases i.e. Kumar Upendra Singh Parimar and State of Uttar Pradesh (supra) the enquiry report and the order passed on the basis of the enquiry report was found to be vitiated on the ground of non-production of evidence as in both the reported cases neither documentary nor oral evidence was produced to support the charge. In the instant case, learned counsel for the State submitted that alongwith resolution dated 16.4.2004 Annexure-1 documents referred to in the charge-sheet was not served on the petitioner but when such fact came to light after receipt of the representation from the petitioner dated 25.5.2004, Annexure-4 another resolution of the Government dated 21.4.2005 Annexure-6 was served on the petitioner enclosing the earlier charge-sheet together with the

documents referred to in the charge-sheet and as documents were served on the petitioner with the resolution dated 21.4.2005, Annexure-6 petitioner in his subsequent written defence dated 26.9.2005, Annexure-7 admitted receipt of the documents including the two reports alongwith its Annexures as earlier under letter dated 22/25.5.2004 Annexure-4 petitioner categorically stated that he has not received 36 Annexures appended with the report of the District Accounts Officer, Bhojpur who held the petitioner, his predecessors guilty of having no control over the distribution of the scholarship amount. It is submitted by the counsel for the State that as petitioner in his written defence did not dispute the findings recorded in the aforesaid two reports there was no necessity to examine the authors of the report in support of the findings recorded in the report. According to the learned counsel for the State had the petitioner disputed the findings of the Internal Enquiry Officer i.e. the Sub-Divisional Officer and the District Accounts Officer the authors of those two enquiry reports were required to have been examined to bring home the guilt against the petitioner. Learned counsel for the State in this connection, placed reliance on paragraph-9 of the judgment in the case of Kumar Upendra Singh Parimar (*supra*) and submitted that the documents on the basis of which internal enquiry report was prepared against the petitioner of that case holding him guilty of charges was neither introduced nor proved in the said proceeding. Similarly in the case of State of Uttar Pradesh and Others (*supra*) learned counsel for the State referred to paragraph-7 of the judgment to suggest that the documents asked for by the petitioner of the said case was also not given to the petitioner either by the Disciplinary or Enquiry Authority. It is submitted by the counsel for the State that as the documents on the basis of which internal enquiry report is based was given to the petitioner and petitioner never disputed the contents of those documents, it was not necessary for the authorities to examine the authors of the report who found the petitioner guilty of the charge of improper disbursement of scholarship amount through cheque in favour of the Principal of the College contrary to the instructions of the Government dated 10.10.1998 to disburse the amount directly in favour of the students through account payee cheque drawn in their name. While relying on the aforesaid two case law learned counsel for the petitioner overlooked the well settled legal position that the technicalities of the Evidence Act, which govern criminal trial in courts are not applicable to the departmental proceedings. In criminal trial standard of proof is beyond reasonable doubt, whereas in departmental proceeding finding of guilt is recorded on the basis of probabilities of circumstances and documents relied upon to bring home the charge against the delinquent need not be formally proved. In the instant case, finding recorded by the Sub-Divisional Officer, Piro and the District Accounts Officer in their reports dated 24.3.2003 and 7.11.2003 served on the petitioner under resolution of the Government dated 21.4.2005 categorically proved the charges levelled against the petitioner with reference to the 36 Annexures appended with the report dated 7.11.2003 that petitioner disbursed the scholarship amount through cheques drawn in favour of Principal of the College contrary to the Government instructions contained in letter dated

5480 dated 10.10.1998 to pay the scholarship amount to the students through account payee cheque drawn in the name of the students payable in his Bank Account opened either in the Bank or Post Office and one of the three colleges was also non-existent. Response of the petitioner in this connection in his written defence as also in the second show cause reply that the Government instruction dated 10.10.1998 was not in vogue in the light of the notes of the District Magistrate is wholly misconceived as the notes of the District Magistrate dated 8.11.1996 at page 53 of the brief to follow the earlier procedure stood superseded in the light of the Government instruction dated 10.10.1998 to pay the scholarship amount directly to the students through account payee cheque drawn in the name of the students payable in his account opened either in the Bank or in the Post office.

8. Departmental proceeding having been initiated against the petitioner under resolution of the Government dated 16.4.2004 and 21.4.2005, Annexures-1, 6, as such, in my opinion, it was not necessary to obtain prior approval of the Chief Secretary for initiating the proceedings for imposing major punishment against the petitioner, whose lack of control, supervision over his subordinates has led to defalcation of Rs. 31,44,835/-. Now coming to the last submission of the counsel for the petitioner that by imposing minor punishment on the Sub-Divisional Welfare Officer under notification dated 18.7.2003, Annexure-3 and dismissing the petitioner under impugned notification, the authorities have discriminated against the petitioner, such submission has been noticed for being rejected as petitioner being the Disbursing Officer it was his duty to disburse the amount after being satisfied that amount disbursed shall not be misused and disbursement has been made as per the procedure envisaged under Government instructions dated 10.10.1998. Learned counsel for the petitioner is not justified in placing reliance over the order passed in the case of his subordinate who neither served as Disbursing Officer nor was in any position to impress upon the decision making by the petitioner, as such, the case of Sub-Divisional Officer and District Welfare Officer stands on different footing and it was for the Government to impose appropriate punishment on them. So far petitioner is concerned, I am satisfied that for the charges proved against the petitioner he has been appropriately dealt with and I do not find any illegality either with the enquiry report or with the second show cause notice or with the final punishment notification. The writ petition is, accordingly, dismissed.