

(2007) 02 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 12847 of 2004

Shyam Nandan Prasad Thakur

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Citation : (2007) 2 PLJR 709

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard counsel for the petitioner and the State. Counter affidavit has been filed on behalf of respondent no.4 the Superintending Engineer, Design Circle, Samastipur and Executive Engineer, Design Division No. 3 Samastipur.

2. Petitioner has challenged the order dated 19.5.2003 contained in letter no. 51 passed by respondent no. 2 the Commissioner-cum-Secretary, Water Resources Department, Sinchai Bhawan, Bihar, Patna upholding the punishment awarded to the petitioner. In the departmental enquiry major punishment to realise Rs. 1,99,443.00/- from the gratuity and leave encashment of the petitioner has been awarded and ordered that the arrears of salary for the period under suspension will not be paid to the petitioner. This order has been upheld by the appellate authority.

3. Petitioner has challenged the order on the ground that in the departmental enquiry the order of punishment has been passed by the Chief Engineer, Water Resources Department, Samastipur whose involvement has also surfaced and identified in making payment of salary to the fake persons amounting to Rs. 10,70,955.00 though such persons were never appointed in the department. The Chief Engineer is also facing departmental enquiry for the same charges as such he could not have passed any order of punishment in the departmental enquiry

against the petitioner. So far the appellate order is concerned it has been submitted by the petitioner that on perusal of the appellate order it is apparent that it is based on the order passed by the Chief Engineer in the departmental enquiry. The appellate authority has neither considered any document on the record nor he has considered the case of the petitioner independent of the order passed by the Chief Engineer. Since the earlier order is not sustainable the appellate order must also go. In support of this contention the petitioner has drawn my attention to the order passed in C.W.J.C. No. 510 of 2003 and two analogous cases. Writ petitioners of all three writ applications were employees of same zone under the same Chief Engineer, and they were also found guilty in the departmental proceeding for same charges i.e. payment of salary to the employees on fake appointment by way of transfer.

4. Punishment orders were set aside on the ground that Disciplinary authority being the Chief Engineer, himself being under the cloud, any order passed by him in a departmental proceeding for same occurrence is tainted and fit to be quashed.

5. Counter affidavits and supplementary affidavit has been filed on behalf of Superintending Engineer, Design Circle, Samastipur, respondent no. 4 and the Executive Engineer, Design division no. 3, Samastipur, respondent no. 5. In the counter affidavit it has been stated that the petitioner was suspended and departmental proceeding was initiated against him. As the petitioner being the head clerk has assisted in making payment of salary to five forged employees during the period they worked in Design Division No. 3, Samastipur. These employees received payment of salary amounting to Rs. 10,79,955/- of which the petitioner was also one of the party. In the departmental proceeding petitioner was given notice in response to which he filed his show cause and only after proper hearing the order has been passed in the departmental proceeding. Petitioner was also given second show cause notice and he has submitted his show cause. The disciplinary officer found him guilty and awarded punishment. It has also been stated that the order passed in the departmental enquiry has been affirmed by the appellate authority. It has wrongly been stated by the petitioner that the appellate authority has upheld the order passed by the Disciplinary authority without examining the material on record and without going through the matter. The appellate authority thoroughly considered the case of the petitioner and thereafter by a speaking order has affirmed the order of punishment passed by the Disciplinary authority. Petitioner does not deserve any relief as prayed in the writ application.

6. From perusal of the counter affidavit and the supplementary counter affidavit I find that the ground which has been taken by the petitioner regarding the punishment order passed by the Disciplinary authority who himself is facing a departmental proceeding for same charges has not been denied. The appellate order has been passed placing reliance on the order passed by the Disciplinary authority differing with the recommendation of the enquiry authority passed

order holding petitioner guilty and imposed punishment since the first order itself is illegal as it has been passed by a person who himself is facing trial for same charge, the appellate order cannot be sustained. From perusal of the orders passed by this Court in C.W.J.C. No. 510 of 2003 and analogous cases as well as the order passed in C.W.J.C. No. 12346 of 2003 I find that the petitioner is also entitled for similar relief. Accordingly the order dated 19.5.2003 contained in Letter no. 51 passed by the Secretary-cum-Commissioner, Water Resources Department as well as the order dated 28.9.2002. contained in Memo No. 3481 passed by the Chief Engineer, Water Resources Department, Samastipur are quashed and this application is allowed. The respondents are directed to make payment of gratuity and leave encashment to the petitioner within four weeks from the date of receipt/communication of this order and other consequential benefits for which the petitioner is entitled on account of setting aside the order passed in the departmental proceeding.