

IN THE HIGH COURT OF JUDICATURE AT PATNA

Smt. Abha Kumari
Vs.
The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 17189 of 2015
21 September, 2023

(Hon’ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

Whether the impugned order of punishment dated 30.6.2015, passed by the Special Secretary, Social Welfare Department, Government of Bihar, was sustainable in law, in light of the allegations, enquiry report, and legal requirements of a reasoned order.

Headnotes

Present case is a case of no evidence. - Impugned order dated 30.6.2015 is not only cryptic but also an unreasoned order, depicting complete non-application of mind inasmuch as the same has not taken into account the defence put forth by the petitioner, apart from no clear, cogent and succinct reasons, having been furnished by the Respondent authority, for coming to a decision warranting infliction of punishment upon the petitioner. It is a trite law that furnishing of clear, cogent and succinct reasons in support of the impugned order, is an indispensable component of a decision making process. (Para 7)

Petition is allowed. (Para 9)

Case Law Cited

Roop Singh Negi v. Punjab National Bank & Ors., (2009) 2 SCC 1970; State of Uttar Pradesh & Ors. v. Saroj Kumar Sinha, (2010) 2 SCC 772; Janeshwar Sinha v. State of Bihar & Ors., 2022 (1) PLJR 169; Dr. Kamla Singh v. State of Bihar & Ors., 2023 (1) PLJR 803; ORYX Fisheries Pvt. Ltd. v. Union of India, (2010) 13 SCC 427

List of Acts

Bihar CCA Rules, 2005

List of Keywords

Departmental proceeding, Quasi-judicial function, Punishment order, Cryptic order, No evidence, Reasoned decision, Disciplinary authority, Show cause notice, Enquiry report, Suspension period

Case Arising From

Challenge to the punishment order dated 30.6.2015 passed by the Special Secretary, Social Welfare Department, Government of Bihar.

Appearances for Parties

For the Petitioner: Mr. Subodh Kumar Sinha, Advocate

For the Respondents: Mr. Aditya Nath Jha, AC to SC-18

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17189 of 2015

Smt. Abha Kumari W/o Sri Krishna Prasad posted as Child Development Project Officer at Bhabhua, District- Kaimur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. Sri Sandeep Pondrik, Secretary Social Welfare Department, Government of Bihar, Patna.
3. Sri Birendra Kumar, Special Secretary, Social Welfare Department, Government of Bihar, Patna.
4. Deputy Secretary, Social Welfare Department, Government of Bihar, Patna.
5. District Programme Officer, Sitamarhi.
6. Sri Upendra Jha, Deputy Director, Social Welfare Directorate-cum-Enquiry Officer, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Subodh Kumar Sinha, Adv.
For the Respondent/s : Mr. Aditya Nath Jha, AC to SC-18

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 21-09-2023

The present writ petition has been filed seeking quashing of the order dated 30.6.2015, passed by the Special Secretary, Social Welfare Department, Government of Bihar, Patna i.e. the Respondent No. 3.

2. The present case has a chequered history, inasmuch as a departmental proceeding was initiated against the petitioner, vide order dated 23.6.2010 and a memo of charge was served



upon her, whereafter she had submitted her show cause reply dated 21.7.2010 and the Inquiry Officer had then conducted the departmental proceeding, whereafter he had submitted enquiry report dated 19.10.2010, exonerating the petitioner herein, nonetheless, the disciplinary authority had passed an order of punishment dated 16.5.2011, inflicting the punishment of stoppage of three increments with cumulative effect and it was further directed that she would not be entitled to any payment for the suspension period except the subsistence allowances already paid to her. The petitioner had then filed an appeal, however, the same had stood dismissed, by an order dated 29.11.2011.

3. The aforesaid two orders dated 16.5.2011 and 29.11.2011 were challenged by the petitioner, by filing a writ petition bearing CWJC No. 15083 of 2012, which was allowed, vide order dated 7.2.2013 and the impugned orders dated 16.5.2011 and 29.11.2011 were quashed on the ground that the disciplinary authority had not issued any notice to the petitioner disclosing reasons for differing with the findings of the inquiry Officer as also had not afforded any opportunity of hearing to the petitioner with regard to such difference. Thereafter, the Disciplinary Authority had issued a second show cause notice



dated 4.3.2015, to which the petitioner had furnished her reply dated 7.4.2015, detailing therein her defence and stating that since she was, at that moment of time, posted as Child Development Project Officer, Nanpur, Sitamarhi, she had taken all the precautions and in fact, had also issued show cause to the Sevika of the centre in question with regard to the irregularities, committed by the said Sevika as also she has not been alleged to have engaged in any irregularity at the centre in question, which also stands substantiated from the enquiry report, submitted by the Inquiry Officer on 19.10.2010. Thus, it is submitted that the present case is a case of no evidence, hence, no punishment can be inflicted upon the petitioner. This aspect of the matter is no longer res integra, inasmuch as the same has been considered by the Hon'ble Apex Court in the case of *Roop Singh Negi vs. Punjab National Bank & Ors.*, reported in (2009) 2 SCC 1970, as also in the case of *State of Uttar Pradesh & Others vs. Saroj Kumar Sinha*, reported in (2010) 2 SCC 772.

4. The learned counsel for the petitioner has further submitted that the impugned order dated 30.6.2015, passed by the Respondent No. 3, would show that the same is mere narration of facts and has neither dealt with the defence put forth by the petitioner nor mentions instances of irregularities,



alleged to have been committed by the petitioner and the proof thereof, hence, the same is also based on no evidence, apart from being a cryptic order, not depicting proper application of mind, inasmuch as no cogent or succinct reason have been furnished for inflicting punishment upon the petitioner, which is an indispensable part of a decision making process. In this regard, the learned counsel for the petitioner has referred to a judgment, rendered by a coordinate Bench of this Court in the case of *Janeshwar Sinha vs. State of Bihar and Others*, reported in 2022 (1) PLJR 169, paragraphs no. 5 and 9 whereof are reproduced hereinabove:-

“5. Learned counsel for the petitioner submits that the disciplinary authority was exercising quasi-judicial power. Therefore, he was bound to mention the defence raised by the petitioner in his show cause which would have been material for consideration before the authority and thereafter by a reasoned order he should have rejected the same. In absence of any reason, the impugned order suffers from non-application of mind and arbitrariness, as such is not sustainable in law.

6. The State has filed detailed counter affidavit controverting the claim of the petitioner, however does not dispute that the impugned order does not disclose the defence of the petitioner or reason for non-acceptance of the same.



7. In *Roop Singh Negi v. Punjab National Bank*, reported in (2009) 2 SCC 570, relied upon by learned counsel for the petitioner, the Hon'ble Supreme Court said that "Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties." "Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned."

8. Evidently in the case on hand, the disciplinary authority has not assigned any reason for awarding the punishment against the petitioner. Hence the impugned order is hereby quashed. There is no need for further remand of this matter, as sufficient injustice has been done with the petitioner who retired in the year 2001.

9. Hence authorities are directed to make payment of entire retiral dues including entire salary for the period of suspension minus already paid amount. The Suspension period was in between 08.03.1999 to 30.11.2000. If any recovery has been made from the petitioner in pursuance of the impugned order that would also



be refunded to the petitioner.”

5. The learned counsel for the petitioner has referred to yet another judgment, rendered by a coordinate Bench of this Court in the case of *Dr. Kamla Singh vs. State of Bihar & Others*, reported in 2023 (1) PLJR 803, paragraph no. 7 whereof is reproduced hereinbelow:-

“7. So far as second contention of the petitioner is concerned, the same has substance. From perusal of the order of punishment, it is evident that the Disciplinary Authority, without taking into consideration or discussing show cause reply of the petitioner, has mechanically passed the impugned order. The impugned order does not contain any discussion as to how the petitioner's reply to the second show cause notice was not acceptable to the disciplinary authority referring to the points taken therein. In this case, order of punishment does not disclose the application of mind. As per Rule 19 of the Bihar CCA Rules, 2005, it is incumbent upon the authorities concerned to consider the representation made by the employees and such consideration means a conscious application of mind and also a consideration of the explanation given by the employees in an objective basis. Reference is made to the decision of the Division Bench of this Court in case of *Dr. Rabindra Nath Singh vs.*



The State of Bihar and Others, reported in 1983
PLJR 92.”

6. Per contra, the learned counsel for the Respondent-State has submitted that the procedure, required to be followed in conduct of the departmental proceeding, has been followed, hence, this Court would not sit in appeal and re-appreciate the evidence, thus, there is no infirmity in the impugned order dated 30.6.2015.

7. I have heard the learned counsel for the parties and perused the materials on record. It is evident from the records, as narrated by the learned counsel for the petitioner and recorded hereinabove in the preceding paragraphs that the present case is a case of no evidence. This Court further finds that the impugned order dated 30.6.2015 is not only cryptic but also an unreasoned order, depicting complete non-application of mind inasmuch as the same has not taken into account the defence put forth by the petitioner, apart from no clear, cogent and succinct reasons, having been furnished by the Respondent No. 3, for coming to a decision warranting infliction of punishment upon the petitioner. It is a trite law that furnishing of clear, cogent and succinct reasons in support of the impugned order, is an indispensable component of a decision making process. Reference, in this connection, be had to a judgment,



rendered by the Hon’ble Apex Court in the case of *ORYX Fisheries Pvt. Ltd. vs. Union of India*, reported in (2010) 13 SCC 427.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I deem it fit and proper to quash the impugned order dated 30.6.2015 as also preclude the respondent authorities from proceeding any further in the matter, inasmuch as the petitioner has already been harassed to bits on account of hanging of sword over her head since the year, 2010 apart from sufficient injustice being meted out to the petitioner.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.9.2023
Transmission Date	NA

