

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1507 of 2018

In

Civil Writ Jurisdiction Case No.24188 of 2013

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Ravi Kumar Sinha, son of late Vijay Kumar Sinha, resident of Quarter No. 2, Type-IV, Bhavishya Nidhi Enclave, Block-H, Shaheed Bhagat Singh Nagar, Near City Center, Basant Avenue, Ludhiana, Panjab-141013.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Development Department, Government of Bihar, Patna
2. The Chief Engineer, Water Resources Department, Government of Bihar, Patna
3. The Executive Engineer, Triveniganj Canal Construction Division, Narkatiaganj, West Champaran.
4. Director-cum-Enquiry Officer, Water Management-cum-Irrigation Availability Reform Directorate, Irrigation Bhawan, Patna.
5. Superintendent Engineer-cum-Public Information Officer, Irrigation Monitoring Cell- 316 (Irrigation Bhawan), Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Nand Kishore Prasad Sinha, Advocate
For the Respondent/s : Mr. Deepak Sahay Jamuar, AC to AAG-4

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

And

HONOURABLE MR. JUSTICE S. B. PD. SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 05-05-2025

Heard the parties.

2. The appellant has assailed the order of the learned Single Judge dated 22.06.2018 passed in C.W.J.C No. 24188 of 2013.

3. Brief facts of the case are that the appellant's late father was posted as Junior Engineer in Triveni Canal



Construction Sub-division, Kaurewa, Camp Sikta under Triveni Canal Construction Division, Narkatiyaganj during the period 2003-05. He remained absent from duty in unauthorized manner since 28.8.2003. During this period, he neither executed any Government work nor he performed election duty during Lok Sabha Election, 2004 which is in utter violation of the order issued by the competent authority. The delinquent employee was placed under suspension by Memo No. 404 dated 30.04.2005 (*Annexure-4* to the writ petition) in contemplation of proceedings against him on the ground of unauthorized absence from the duty since 28.8.2013. The departmental proceeding was initiated against him under Rule 55 of the CCA Rules, 1930 vide resolution dated 24.5.2005, which is *Annexure A* to the counter affidavit filed on behalf of the respondents. A copy of the said resolution along with the charges and evidence were duly communicated to the employee. However, neither he gave his joining at the headquarter in compliance of the direction of the Executive Engineer contained in letter dated 25.4.2005 nor did he submit his written defence before the Inquiry Officer in spite of valid service of notice even at his permanent address. Thereafter, respondents communicated the notice in a widely circulated newspaper on 26.6.2005 and 25.10.2005 which is



evident from *Annexure-B* series to the counter affidavit. Charge memo dated 23.5.2005 is also enclosed along with *Annexure-B* series. In spite of adequate notices, petitioner's late father did not turn up to give his joining at the headquarter and continued to ignore the suspension order as also the charges were framed against him. On 30.12.2005, the Inquiry Officer submitted the Inquiry report holding the charges proved against the delinquent. A copy of the Inquiry report has been annexed as *Annexure-D* to the counter affidavit. On 25.06.2010, second show-cause notice was issued to the delinquent which was replied by him on 22.07.2010 and ultimately, vide Memo No. 1535 dated 11.10.2020, the delinquent was dismissed from the service.

4. From perusal of the Enquiry Report, it appears that Inquiry Officer hurriedly proceeded to conclude the departmental inquiry within few days and in a flimsy manner, the late father of the appellant was dismissed from the service.

5. In this regard, it is necessary to reproduce the dismissal order dated 11.10.2010.

बिहार सरकार

जल संसाधन विभाग

आदेश

आ0स0-22/नि0सि0(मोति0)-8-1/2005/189/पटना,



दिनांक-11-10-10

श्री विजय कुमार सिन्हा, तत्कालीन कनीय अभियंता, त्रिवेणी नहर निर्माण अवर प्रमण्डल, कौरवा, शि०-सिकरा (त्रिवेणी नहर निर्माण प्रमण्डल नरकटियागंज के अधीन) को स्वेच्छा से अनाधिकृत रूप से मुख्यालय से अनुपस्थित रहने सरकारी कार्य का निष्पादन नहीं करने लोक सभा चुनाव कार्य 2004 में भाग नहीं लेना तथा अनुपस्थिति विवरणी निबंधित डाक से भेजने एवं नियंत्री पदाधिकारी के आदेश का अनुपालन नहीं करने आदि प्रथम द्रष्टया प्रमाणित आरोपों के लिए विभागीय आदेश सं०-37 सह ज्ञापांक 404 दिनांक-30.04.05 द्वारा निलंबित करते हुए उनके विरुद्ध सिविल सर्विसेज (वर्गीकरण, नियंत्रण एवं अपील) रूल्स-1930 के नियम-55 के तहत विभागीय संकल्प ज्ञापांक-518 दिनांक-24.5.05 द्वारा विभागीय कार्यवाही प्रारम्भ की गई।

निलंबन अवधि के लिए निर्धारित मुख्यालय "निदेशक, जल प्रबंधन एवं सिंचाई उपलब्धि सुधार निदेशालय, पटना" में श्री सिन्हा द्वारा योगदान नहीं दिया गया और न ही संचालन पदाधिकारी के समक्ष अपना कोई लिखित बयान ही दिया गया। इस बीच संदर्भित आदेश एवं पत्रों का तामिला श्री सिन्हा के स्थाई पते पर कराने का प्रयास निष्फल होने पर दो बार क्रमशः दि०-26.06.2005 तथा दि०-25.10.2005 को समाचार पत्रों में भी सूचना प्रकाशित की गई। फिर भी श्री सिन्हा द्वारा मुख्यालय में योगदान नहीं दिया गया। श्री सिन्हा द्वारा विभागीय कार्यवाही में उपस्थित नहीं होने के परिपेक्ष्य में श्री सिन्हा के विरुद्ध आरोप को स्वतः प्रमाणित होने का उल्लेख करते हुए जॉच पदाधिकारी द्वारा अग्रेतर कार्रवाई विभाग द्वारा किये जाने का अनुरोध किया गया। ऐसी स्थिति में आरोपों को स्वतः प्रमाणित मानते हुए क्यों नहीं सेवा से बर्खास्त कर



दिया जाय, इस बिन्दु पर श्री सिन्हा से विभागीय पत्रांक 960 दिनांक 25.6.10 द्वारा द्वितीय कारण पुच्छा की गई। श्री सिन्हा द्वारा दिये गये द्वितीय कारण पुच्छा का उत्तर दिनांक 22.7.10 की समीक्षा एवं जॉच पदाधिकारी द्वारा समर्पित जॉच प्रतिवेदन जिसमें आरोप स्वतः प्रमाणित होने का उल्लेख है, की समीक्षा विभाग द्वारा की गई सम्यक समीक्षोपरान्त निम्न तथ्य पाये गये:—

(1) श्री सिन्हा द्वारा न तो निर्धारित मुख्यालय में योगदान ही किया गया एवं न ही विभागीय कार्यवाही में श्री सिन्हा उपस्थित हुए जबकि इसके लिए उनके निवास स्थान के पते पर निबंधित डाक से सूचना भेजी गई एवं प्रेस विज्ञप्ति के द्वारा दो बार दैनिक समाचार पत्र में सूचना भी प्रकाशित की गई।

(2) श्री सिन्हा को निलंबन की जानकारी प्राप्त होने के पश्चात भी उनके द्वारा निलंबन अवधि में निर्धारित मुख्यालय में आजतक योगदान नहीं किया गया है।

(3) आरोपित पदाधिकारी विभागीय कार्यवाही में उपस्थित नहीं हुए जिसके फलस्वरूप जॉच पदाधिकारी द्वारा उपलब्ध साक्ष्यों/अभिलेखों के आधार पर जॉच प्रतिवेदन समर्पित किया गया है जिसमें आरोपों के स्वतः प्रमाणित होने का उल्लेख किया गया है।

(4) उपर्युक्त वर्णित तथ्यों के आलोक में श्री सिन्हा के विरुद्ध निम्न आरोप प्रमाणित पाया गया:—

(क) विभागीय एवं उच्चाधिकारियों के आदेश की जान बूझ कर अवहेलना करना।

(ख) मुख्यालय एवं कार्यस्थल से लगातार अनुपस्थित रहना एवं बिना कार्य किये ही वेतन भुगतान के लिए उच्चाधिकारियों पर अनावश्यक दबाव बनाना।



(ग) मुख्यालय से अनुपस्थित रहने के कारण श्री सिन्हा, क0 अ0 द्वारा लोक सभा चुनाव-2004 का चुनाव कार्य हेतु प्रतिनियुक्ति पत्र को न तो प्राप्त किया गया और न निर्वाचन कार्य में ही भाग लिया गया।

श्री सिन्हा द्वारा निलंबन आदेश दि0-30.04.05 के बाद से आजतक मुख्यालय में योगदान नहीं देने के कारण इनकी अनाधिकृत अनुपस्थिति लगातार पाँच वर्षों से भी अधिक की हो चुकी है इसलिए बिहार सेवा संहिता के नियम-76 के प्रावधान के तहत श्री सिन्हा बर्खास्तगी के दंड के पात्र भी हो चुके हैं।

उपर्युक्त प्रमाणित आरोपों के लिए श्री सिन्हा को सेवा से बर्खास्त करने का निर्णय विभाग द्वारा लिया गया है। अतः उक्त विभागीय निर्णय के आलोक में श्री विजय कुमार सिन्हा, तत्कालीन कनीय अभियन्ता, त्रिवेणी नहर निर्माण अवर प्रमण्डल, कौरेवा, शि0-सिकटा (आई0डी0जे0-4505) को आदेश निर्गत होने की तिथि से सेवा से बर्खास्त (dismiss) किया जाता है।

(देवी रजक)

अभियन्ता प्रमुख (मध्य)

ज्ञापांक-1535

दिनांक-11.10.10

प्रतिलिपि:-सभी संयुक्त सचिव, (प्रबंधन)/ सभी

उप सचिव (प्रबंधन)/ सभी अवर सचिव, (प्रबंधन) जल संसाधन विभाग, बिहार, पटना/ अभियन्ता प्रमुख, जल संसाधन विभाग, बिहार, पटना/ सभी मुख्य अभियन्ता, जल संसाधन विभाग/ निदेशक, जल प्रबंधन एवं सिंचाई उपलब्धि सुधार निदेशालय, पटना/ अधीक्षण अभियन्ता तिरहुत नहर अंचल, रक्सौल/ कार्यपालक अभियन्ता, त्रिवेणी नहर प्रमण्डल, नरकटियागंज/ प्रभारी वायोडाटा/ कम्प्यूटर



कोषांग/ प्रबंधन सूचना प्रणाली कोषाग, जल संसाधन विभाग/
प्रशाखा पदाधिकारी-7,9,12 एवं 22 जल संसाधन विभाग/ श्री विजय
कुमार सिन्हा, सुपुत्र श्री राम चन्द्र प्रसाद, ग्रा0 एवं मो0-दुग्ल,
भाया-रफीगंज, औरंगाबाद को सूचनार्थ प्रेषित।

(देवी रजक)

अभियन्ता प्रमुख (मध्य)

6. The late father of the appellant joined as Junior Engineer in the year 1979 and thereafter the services of delinquent employee Late Vijay Kumar Sinha was declared substantive on 13th of January, 1987, first time bound promotion was granted to him on 17.05.1993 and up-till 31.03.2003, no complaint was alleged against his services. On 24.02.2002, he was transferred Triveniganj Canal and his joining was accepted on 9th April, 2003. The late father of the appellant, thereafter, filed C.W.J.C No. 1807 of 2001 for acceptance of his joining and salary/payment was withheld by the department and it was allowed on 07.07.2004, directing the concerned authority to pay arrear amount of Rs. 52,496/- to the delinquent employee, keeping in view the fact that no departmental inquiry was initiated against him. The late father of the appellant thereafter filed M.J.C. No. 470 of 2005 for incomplete compliance of the order of Hon'ble High Court and the respondent Executive Engineer in the aforesaid contempt petition issued order for



payment of Rs. 3,95,850/- on 18th March, 2005 and the late father of the appellant was directed to give his joining at the Headquarter by a letter dated 25.04.2005. The late father of the appellant was thereafter suspended on 30th of April, 2005 and vide Memo No. 1535 dated 11.10.2020, he was dismissed from the service.

7. All these facts go to show that since father of the appellant had filed writ petition against the authority concerned, regarding whom, as a retaliatory measure and taking vindictive approach, he was suspended from the service, and without hearing him the Inquiry Officer has found him guilty and *ex-parte* order of major punishment (dismissal) was passed against late father of the appellant.

8. Taking note of these infirmities, it is evident that late father of the appellant has not been provided ample opportunity of adducing evidence before the Inquiring Officer. It is to be noted that major penalty of removal from service has been imposed. In such circumstance the Inquiry Officer/Disciplinary Authority/Appellate Authority/Revisional Authority should have examined as to whether the delinquent employee has been provided ample opportunity of adducing evidence and cross-examining the witnesses. These issues have not been taken note



of by the learned Single Judge. These are the legal issues insofar as adducing evidence and non providing ample opportunity to cross examine the witnesses. The Hon'ble Supreme Court in the case of *State of Karnataka Vs. Umesh* reported in (2022) 6 SCC 563 elaborately considered under what circumstances writ court can interfere insofar as judicial review of disciplinary proceedings. Paragraph-22 of the aforesaid Judgment reads as under:-

“22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and

(iv) whether the findings of the disciplinary authority suffer from perversity; and



(v) the penalty is disproportionate to the proven misconduct. [State of Karnataka v. N. Gangaraj, (2020) 3 SCC 423 : (2020) 1 SCC (L&S) 547; Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806; B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80; R.S. Saini v. State of Punjab, (1999) 8 SCC 90 : 1999 SCC (L&S) 1424 and CISF v. Abrar Ali, (2017) 4 SCC 507 : (2018) 1 SCC (L&S) 310].”

Underline Supplied.

9. The appellant's case would stand fit into the principles laid down by the Hon'ble Supreme Court in the above case of ***State of Karnataka (cited supra)***. On this count appellant has made out a case so as to interfere with the dismissal order dated 25.06.2010 and so also order of the learned Single Judge dated 22.06.2018 passed in CWJC No. 24188 of 2013.

10. At this stage, we have noticed that in the event of quashing of the removal order what would be the consequence in view of the fact that late father of the appellant is not entitled for reinstatement for the reason that if he was alive and in service he would have attained age of superannuation and retired from service on 25.04.2011, therefore there is no point of



reinstatement. Further, it is not a case of remand to the disciplinary authority after 20 years, having regard to the fact that the Inquiring Officer has committed error in passing *ex-parte* order without providing sufficient opportunity of adducing evidence to the late father of the appellant in support of his case. On this point the appellant has made out a case.

11. Be that as it may, having regard to the charges levelled against the delinquent, it is shocking to conscious of this Court insofar as imposition of penalty of removal from service for the reason that the charges were not proved in the manner to the extent that he was not provided sufficient opportunity to adduce the evidence and cross-examine the witnesses produced against him. These are all mandatory requirement in a Departmental Inquiry. However, having regard to the charge of unauthorized absence for prolonged time, we proceed to modify the penalty of removal from service dated 25.06.2010 to the extent of imposition of penalty of compulsory retirement w.e.f. 25.06.2010. Resultantly, late father of appellant is entitled to consequential service and monetary benefits from the date of his appointment as Junior Engineer till 25.06.2010, the date on which removal order was passed and it is modified by us to the compulsory retirement.



12. For the aforementioned intervening period, late father of appellant is entitled to consequential monetary benefits and the same shall be calculated and disbursed. If the post held by the him is pensionable post, in that event, the concerned authority is hereby directed to fix the pension w.e.f 25.06.2010 and calculate and disburse arrears of pension to the appellant till 15.01.2024, as mother of the present appellant, who was rightful recipient of the family pension of her husband, has already died on 15.01.2024. The above exercise shall be completed within a period of six months from the date of receipt/production of a copy of this order.

13. Accordingly, the order of the learned Single Judge dated 22.06.2018 passed in C.W.J.C No. 24188 of 2013 is set aside.

14. The L.P.A is allowed in part.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	19/04/2025
Uploading Date	05/05/2025
Transmission Date	N/A

