

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1490 of 2020

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Sitaram Prasad, S/o Late Gulan Prasad, R/o Village- Tesu (P.O.), P.S. Jairampur @ More, District Sheikhpura, at present working as a demoted Clerk in the Office of Labour Superintendent Lakhisarai, Labour Department.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Principal Secretary, Labour Deptt., Govt. of Bihar, Patna.
3. The Labour Commissioner, Labour Deptt., Govt. of Bihar, Patna.
4. The Joint Labour Commissioner, Labour Deptt., Govt. of Bihar, Patna.
5. The Labour Superintendent, Labour Deptt., Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Salahuddin Khan, Advocate
		Mr. Chandra Bhushan Das, Advocate
For the Respondent/s	:	Mr. Sushil Kumar Singh, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 16-06-2025

Heard the parties.

2. The petitioner is aggrieved with the Office Order, as contained in Memo No. 3020 dated 09.07.2019, issued by the Labour Commissioner, Labour Department, Government of Bihar, Patna, whereby the petitioner was demoted to the minimum pay scale of Clerk and further a direction has been issued to recover 16% interest over the amount of registration/renewal fee of the building construction labourers deposited in his personal accounts. The petitioner is also aggrieved with the appellate order, as contained in Memo No.



3997 dated 23.09.2019, whereby the appeal preferred by the petitioner came to be rejected by the Additional Principal Secretary, Labour Department, Government of Bihar, Patna and the order of punishment aforementioned came to be affirmed.

3. The facts of the case is in narrow compass. While the petitioner was working as Clerk in the office of the Labour Superintendent, Nalanda at Biharsharif in the year 2016, he was transferred to the office of the Labour Superintendent, Lakhisarai; where he joined on 27.10.2016. During the said period, while the petitioner was posted in the office of the Labour Superintendent, Nalanda at Biharsharif, some amount under Registration/Renewal Fee for building construction labourers have been received in the office of Labour Superintendent, but it could not be deposited in the Government Treasury or the official account of the department and allegedly it has been deposited in the account of the petitioner and his wife. The aforesaid amount has later on deposited in the Government treasury on 14.11.2017 and 06.12.2017. The aforesaid fact led to initiation of a departmental proceeding after furnishing memo of charge over the petitioner. In response to the memo of charge, the petitioner submitted his categorical reply. After enquiry, charges stood proved against the petitioner



and based upon that, the disciplinary authority inflicted punishment aforementioned by the impugned order after issuance of second show cause notice to the petitioner.

4. Learned Advocate for the petitioner, Mr. Salahuddin Khan, while assailing the impugned order has submitted that the period during which the amount allegedly could not be deposited, such period was affected with demonetization and only in order to save the subjected Government amount, the petitioner bonafidely deposited the same in his own account and the account of his wife. There is specific contention that when the amount in question was received during the period aforementioned, the then Labour Superintendent, namely, Ganesh Prasad was not interested in signing on the rokar bahi and the bank slip for depositing the said money in the Government Treasury and thus it was kept in the office, the petitioner left with no option deposited the same in his account and the account of his wife. The moment new Labour Superintendent namely, Niraj Nayan joined on 08.07.2016, the aforesaid money was deposited in the Government treasury on 14.11.2017 and 06.12.2017. Had it been the intention of the petitioner to siphon the amount aforementioned, he would not have been deposited the amount, rather deposited in the account of some unknown



person but depositing the amount in his own account and the account of his wife clearly shows his innocence.

5. It is further contended that bonafide of the petitioner is writ large, as immediately after the joining of the new Labour Superintendent, the amount has been deposited and no loss has ever caused to the public exchequer. The order of punishment demoting the petitioner on the minimum pay scale of Clerk is severe punishment and not proportionate to the charges which is said to have been found prove. The petitioner is still ready to deposit the interest over the amount which has been accrued over the subjected amount, during the period, it was kept in his account and the account of his wife. It is also contended that with respect to tampering of record, despite the demand being made by the petitioner to produce the record, the same has never been produced and, as such, the finding of the Inquiry Officer that there is tampering in the record does not substantiate and moreover, the Labour Officer, Ms. Sneha Shiwani in her deposition has stated that she had never made any complaint.

6. On the other hand, learned Advocate for the State vehemently opposed the application and submitted that the facts of the case speak loud and nonetheless the petitioner admitted the charges of temporary embezzlement. It is the admitted



position that the amount has been deposited by the petitioner in his account and the account of his wife, which was later on deposited in the Government treasury, only after the direction of the new incumbent. Had the petitioner been so sanguine about the safety of the amount, it should have been definitely deposited in the Government treasury, rather he had deposited the said amount in his own account and the account of his wife, which is a serious misconduct and financial irregularity. During enquiry, the witness was also examined. The Labour Inspector, namely, Smt. Sneha Shiwani has supported the charges and on being found all the charges proved, the impugned order of punishment came to be passed in accordance with law, after giving proper opportunity to the petitioner, which does not require any interference; the impugned punishment is proportionate to the proved charges is the contention of the learned Advocate for the State.

7. This Court has given patience hearing and anxious consideration to the submissions advanced by the learned Advocate for the respective parties and also perused the materials available on record meticulously.

8. From perusal of the record; facts are admitted, as also the charges levelled against the petitioner stand proved to



the extent that while he was posted in the office of the Labour Superintendent, Nalanda in the year 2016, an amount of Rs.7,07,400/- was received in the office against the Registration/Renewal Fee for labourers of Bihar Building & Other Construction Workers Welfare Board (hereinafter referred to as 'BOCW'), was deposited in the account of the petitioner and kept therein for 8-9 months; out of the aforementioned amount, Rs.40,000/- was also deposited in the joint account of the petitioner with his wife Pancha Devi. Subsequently on strict direction of Labour Superintendent, the amount was deposited in the Government Treasury on 14.11.2017 and further on 06.12.2017 through the Bank drafts prepared by the State Bank of India. There was one another charge, levelled against the petitioner with respect to tampering of the record, which was duly refuted by the petitioner. In the aforesaid premise, the petitioner was served with the Memo of charge and subjected to departmental proceeding. In course of enquiry, the material witness was examined and the Presenting officer supported the charges and finally the enquiry officer concluded the enquiry and returned the finding of guilt on being found all the charges proved. The petitioner was served with the second show-cause notice; response was made by the petitioner and finally



impugned order of punishment came to be passed, which was duly affirmed by the appellate authority.

9. The explanation set forth by the petitioner, as is evident from the record, is in limited bound that despite the oral request made by the petitioner to the then Labour Superintendent Shri Ganesh Jha, he did not show any interest and not allowed spare time to the petitioner to deposit the amount, in question, in the Government Treasury and thus in order to save the Government money, the same was deposited in his account, as also the joint account of the petitioner with his wife. This explanation of the petitioner without any documentary proof and the witness had not been accepted.

10. The Courts have been reminded time and again through the enumerated decisions that while exercising the power of judicial review, the Court is only confined to decision making process and not the decision.

11. It is settled proposition of law that in exercise of the power under Articles 226/227 of the Constitution of India, the Court cannot venture into re-appreciation of the evidence or interfere in conclusion with the enquiry officer, if the same are conducted in accordance with law, or go into reliability/adequacy of evidence, or interfere if there is legal



evidence on which findings are based, or correct error of fact however grave it may be, or go into proportionality of punishment unless it shocks conscience of Court. The Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. P. Gunasekaran, (2015) 2 SCC 610*** has painstakingly enunciated the guidelines and scope of interference while exercising the power under Articles 226/227 of the Constitution and held that “the High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to



admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.”

12. As regards the power of the High Court to reappraise the facts, it cannot be said that the same is completely impermissible under Articles 226 and 227 of the Constitution. However, there must be a level of infirmity greater than ordinary in a tribunal's order, which is facing judicial scrutiny before the High Court, to justify interference as has been held by the Apex Court in the case of *Bharti Airtel Limited Vs. A.S. Raghavendra*, [(2024) 6 SCC 418]. Reiterating the settled legal position right from the case of *State of Andhra Pradesh & Ors. Vs. S. Sree Rama Rao* [AIR 1963 SC 1723] as also in the case of *State of Andhra Pradesh & Ors. Vs. Chitra Venkata Rao* [(1975) 2 SCC 557] and *State Bank of Patiala & Ors. Vs. S K Sharma* [(1996) 3 SCC 364]. The Apex Court in the case of *Bhupendra Singh* (supra) has also observed that in a case where a fair opportunity was given to the delinquent to present his version on account of minor deficiencies in the process, if the same has not caused prejudice to the respondents to the extent warranting judicial interdiction and the charges were proved



based upon legal evidence, the order of dismissal should not interfere normally.

13. While considering the scope of interference with a quantum of punishment, the Hon'ble Supreme Court further observed that in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, it cannot go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. The charges against the petitioner found to be proved and the petitioner has been inflicted the punishment demoting to the minimum pay scale of Clerk and further a direction has been issued to recover 16% interest over the amount for the period, which was kept in his account and the joint account of his wife.

14. The act of the petitioner clearly reflected lack of integrity and even if it is accepted that it was not an embezzlement of Government money, but was a temporary embezzlement and the petitioner has deposited the amount, in question, after ten months and during this interregnum period the fact of deposition of amount, in question, in his account has not been disclosed to any higher authority and thus, prima facie, lacks bonafide on the part of the petitioner. The petitioner failed to point any infirmities in the departmental proceeding, which



led to the issuance of the punishment order by the disciplinary authority and its affirmance by the Appellate authority.

15. In such circumstances, this Court does not find any reason or occasion to interfere with the impugned order. Accordingly, the present writ petition stands dismissed. However, there shall be no order as to costs.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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