

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7586 of 2013

Ashok Kumar Tiwari Son Of Late Shri Ram Pratap Tiwari Resident Of Bank Of India Colony, A - 18, Near Ram Nagari More, P.S. Shastri Nagar, District - Patna
.... Petitioner

Versus

1. The State Of Bihar Through Its Chief Secretary, Government Of Bihar, Patna
2. The Principal Secretary, General Administration Department, Government Of Bihar, Patna
3. The Principal Secretary, Rural Development Department, Government Of Bihar, Patna
4. The Commissioner, Purnea Division, Purnea Respondents

Appearance :

For the Petitioner : Mr. Abhinav Shrivastava, Advocate

For the Respondents : Mr. Prabhat Kumar, AC to GA 2

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 15-07-2016

The petitioner prays for quashing the resolution, dated 24.02.2012, issued by the General Administration Department, Government of Bihar whereby he has been inflicted punishment of dismissal from service pursuant to departmental proceeding with all consequential reliefs.

2. It appears that the petitioner along with Shamim Akhtar, Surendra Roy and Gayanand Yadav, all posted as Block Development Officer between 2004 to 2007, were departmentally proceeded for common charge, namely, (a) he deposited SGRY funds in PACS account by opening a new Account No.13, dated 17.1.2004 instead of depositing the amount in a nationalized bank or a post office as per guidelines of the Central and the State

Government; (b) the funds deposited in the Dehri PACS account were misused for which the petitioner was fully responsible.

3. On conclusion of the enquiry, the enquiry officer exonerated the petitioner including the above mentioned officers for the charges of misuse of money deposited in the PACS. However, the enquiry officer held them guilty of not depositing the SGRY fund in a nationalized bank or a post office in violation of the instructions of the department. The enquiry officer observed that the delinquents ought to have deposited the fund in a nationalized bank or post office instead of depositing it with the local PACS. In the meantime, the Chief Secretary, Government of Bihar by his order, dated 09.01.2010, insisted for a fresh enquiry to establish that payment made to the beneficiaries under Indira Aawas Yojana was mythical and to obtain statements/representations from the identified beneficiaries with regard to non-payment of the fund to them. In view of order of the Chief Secretary, dated 09.01.2010, a supplementary/amended charge was framed against them. And the amended charge sheet was filed which was not much different from the charges contained in the first charge sheet, dated 11.2.2009. To be specific, the first charge reiterated, that fund was deposited with Dehti PACS, in breach of government circulars to deposit the same either in a nationalized bank or a post office. The second

supplementary charge was that the petitioner used the funds for personal gain in connivance with the Manager, Dehti PACS and other intermediaries. In his reply, again the petitioner denied the charges. A fresh enquiry was held. In the fresh enquiry, the petitioner and aforesaid delinquents were held guilty of the charges.

7. On the basis of the enquiry report, second show cause notice was issued without copy of the enquiry report. All the three delinquents, including the petitioner protested. However, all of them, obtained on their own, a copy of the enquiry report and submitted their reply to the second show-cause.

8. Not being satisfied with the explanation of any of the delinquents, the General Administration Department inflicted punishment of dismissal from service vide separate resolution, dated 17.02.2012. Order of dismissal is under challenge in the writ petition.

9. It would appear from charge memo that the period of allegation is from 2006 to 2008. All the delinquents, referred to in this order held the post of BDO at one period or the other. The petitioner further submits that his case is better than the case of Surendra Roy and Gayanand Yadav, who also had challenged their dismissal order in C.W.J.C.Nos. 14595 of 2012 and C.W.J.C.No. 20812 of 2012, respectively. This Court after hearing the parties set

aside order of dismissal vide common order, dated 20.5.2016. The petitioner submits that all the points taken by the aforesaid petitioners are also available in this case. Furthermore, his case is on better footing as he was transferred from the post of BDO, Palasi, District Araria on 14.10.2005, whereas the charge is of 2006 to 2008.

10. I find that the case of the petitioner is at least on similar footing to that of Shamim Akhtar, Surendra Roy and Gayanand Yadav, whose dismissal have already been set aside. In the result, the writ petition succeeds. The impugned order of dismissal is set aside in terms of order dated 20.5.2016, passed in C.W.J.C.Nos. 14595 of 2012 and C.W.J.C.No. 20812 of 2012, with the liberty mentioned therein.

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(Samarendra Pratap Singh, J)