IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13158 of 2006

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Ajit Kumar Mishra son of late Akshayavat Mishra, resident of Anandbagh Colony, Mohalla- Bhikhanpur, P.S. Kotwali in the town and District- Bhagalpur.

... ... Petitioner/s

Versus

1. Hon'ble High Court of Judicature at Patna through its Registrar (Administration), Patna High Court, Patna.
2. District Judge, Civil Court, Bhagalpur.
3. Enquiry Officer cum Additional District Judge, Civil Court, Bhagalpur.
4. State of Bihar through the Secretary (Personnel & Administrative Reforms Department), Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate.
		Mr. Manoj Kumar, Adv.
		Mr.Mukund Jee, Adv.
For the High Court	:	Mr. Piyush Lall, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date : 13-08-2020

1. The present writ petition has been filed for quashing the order dated 07.08.2006 issued by the Registrar (Administration), High Court, Patna, whereby and whereunder the appeal filed by the petitioner has been dismissed as also for quashing the order dated 11.07.2005 passed by the District Judge, Civil Court, Bhagalpur, whereby and whereunder the petitioner has been inflicted with the punishment of dismissal from service. The petitioner has further prayed for quashing of the findings of the Enquiry Officer, contained in letter dated 22.03.2005 whereby the Enquiry Officer has found the petitioner guilty of gross negligence and dereliction in duty.

Consequently, it has been prayed to re-instate the petitioner in service with full benefits.

2. The brief facts of the case are that the petitioner herein was posted on the date of alleged occurrence as Nazir in Civil Court, Bhagalpur. A show cause notice dated 12.07.2004 was issued by the District Judge, Bhagalpur to the petitioner herein stating therein that while the petitioner was posted as Nazir Incharge, Sadar, Bhagalpur, in the month of December, 2004 (year wrongly mentioned, which should be 2003), he was directed by the Munsif-II, Bhagalpur to execute delivery of possession in favour of decree-holder of Title Execution Case No. 17/99, but as per report of Registrar Inchage, Civil Court, Bhagalpur, the petitioner along with the peons went to the shop in question, knowing very well that delivery of possession was not possible at such a sensitive place without taking the help of the police force, with the intention to defeat the writ issued by the Court for execution of delivery of possession whereafter the petitioner submitted a report dated 04.12.2004 (should be 04.12.2003), instead of executing the writ issued by the court and handing over the possession of the shop in favour of the decree-holder, Thus the Registrar Incharge, Civil Court, Bhagalpur, prima facie found the petitioner guilty of being

negligent and having committed dereliction in his duties. Thereafter, the District Judge, Bhagalpur, by an order dated 23.09.2004 had initiated departmental proceeding against the petitioner herein, appointing the 3rd Additional District and Sessions Judge, Bhagalpur as the Enquiry Officer as well as had put the petitioner under suspension. The District Judge, Bhagalpur framed two charges against the petitioner herein, which are reproduced herein below:-

> *"(1) That you, while posted as Nazir I/C, Civil Court, Sadar, Bhafalpur on 14.12.2003, received the writ, issued by the court of Munsif 2nd, Bhagalpur in T.Ex. Case No. 17/99 for making D.P. of the shop in question in favour of Decree-Holder but you negligently and carelessly did not make proper arrangement of police force for affecting the D.P. issued by the court and with intent to defeat the writ, submitted false report for the purpose of getting extraneous consideration.*
>
> *(2) That at your instance the peons namely, Satya Narain Singh, Suresh Kumar Singh and Md. Afsar, all of Civil Court, Sadar, Bhagalpur, made demand of Rs. 20,000/- as bribe for affecting the Delivery of Possession in execution of decree as mentioned in the above charge."*

3. The Enquiry Officer-cum- Additional District & Sessions Judge, Fast Track Court No. V, Bhagalpur submitted his enquiry report dated 22.03.2005 wherein the Enquiry Officer found the allegation against the petitioner relating to taking of money from the allegationist to have not been substantiated and accordingly exonerated the petitioner of the allegation of taking money from the allegationist namely Preeti Shree. As regards the allegation pertaining to commission of negligence and dereliction in duties, by defeating the order of the Court for execution of delivery of possession of the shop by breaking the lock of the same, the Enquiry Officer came to a finding that the petitioner and his team of three peons had gone to the spot with the Executive Magistrate, deputed to assist the process of the court, without the police force knowing that delivery of possession was not possible since the matter was sensitive, hence found the petitioner guilty of gross negligence and dereliction of duty, however, it was recommended that considering the past service record and other circumstances affecting the welfare of family members of the petitioner, though the petitioner deserves major punishment except for the punishment of dismissal from service, a lesser punishment can also be awarded.

4. The District Judge, Bhagalpur had then issued a show cause notice dated 04.04.2005 directing the petitioner to submit show cause reply as to why he should not be awarded adequate punishment for his negligence and dereliction in duty. The petitioner had then replied to the aforesaid show cause notice dated 04.04.2005. A second show cause notice dated 02.06.2005 was then issued by the District Judge, Bhagalpur stating therein that he was in agreement with the findings and conclusion of the Enquiry Officer and upon consideration of the report of the Enquiry Officer, he was prima facie of the view that for the proved misconduct, it would be justified if punishment of dismissal from service is inflicted upon the petitioner, hence, show cause reply against the proposed punishment be submitted. The learned District Judge, Bhagalpur had then passed the impugned order of punishment dated 11.07.2005 dismissing the petitioner from service, however, the peons Shri Satya Narain Singh, Sri Suresh Kumar Singh and Sri Md. Afsar, who were found to have assisted the petitioner herein, to defeat the warrant of execution of decree, were awarded punishment of withholding of four increments permanently.

5. The petitioner is stated to have filed an appeal

against the aforesaid order of punishment dated 11.07.2005, however, the said appeal is stated to have been rejected, as was communicated to the petitioner vide letter dated 07.08.2006 issued by the Registrar (Administration), High Court, Patna.

6. The learned senior counsel appearing for the petitioner has submitted that admittedly, the petitioner has stood exonerated of the charge/ allegation of demand of Rs. 20,000/- as bribe for affecting delivery of possession in execution of a decree and he has only been held guilty of being negligent and careless in his duties, with the intention of defeating the writ of the delivery of possession issued in favour of the judgment-debtor. The learned Senior counsel for the petitioner has submitted that as far as the charge of negligence and dereliction of duties in defeating the writ of delivery of possession, issued in favour of the judgment debtor is concerned, it must be pointed out that the Munsif-II, Bhagalpur vide order dated 22.11.2003 had ordered for effecting delivery of possession on 20.12.2003, whereafter the petitioner had received a letter dated 02.12.2003 vide letter no.35. On 20.12.2003, the parties to the proceeding had filed their attendance and the case was adjourned for 17.01.2004 for further proceeding, but later on, on 20.12.2003 itself, upon receipt of a report dated 14.12.2003

submitted by the petitioner regarding delivery of possession, it was acknowledged that neither the decree holder nor his representative were present on the spot as well as the requisitioning force was also not present on the spot, however, the Executive Magistrate was present there, hence delivery of possession could not be affected and to this effect a report was submitted by the petitioner containing the specific endorsement made by the deputed Executive Magistrate that there was no police force on the spot causing non-delivery of possession. The learned Senior counsel for the petitioner has further submitted that the petitioner had made requisition for the police force in order to effect the delivery of possession on 14.12.2003 and in this regard a letter dated 09.12.2003 was sent to the Superintendent of Police, Bhagalpur and this fact was duly acknowledged by the Sub-Divisional Magistrate, Bhagalpur, whereafter the Sub-Divisional Officer, Sadar, Bhagalpur vide order dated 13.12.2003 had deputed Executive Magistrate for affecting the delivery of possession along with police force and a copy of the said order was also sent to the Deputy Superintendent of Police, Bhagalpur as also to the Officer Incharge, Kotwali police station, Bhagalpur for information and necessary action.

7. The learned Senior counsel for the petitioner has also submitted that even the Munsif-II, Bhagalpur vide judicial order dated 20.12.2003 has accepted the report submitted by the petitioner to be bona fide and the petitioner has not been found to be guilty of negligence or dereliction in his duty. Nonetheless, it is submitted that delivery of possession has already been affected during the pendency of the departmental proceeding against the petitioner herein. The learned Senior counsel for the petitioner, to show that delivery of possession could not be effected on account of other reasons as well, has relied upon the deposition of witness no.1 produced by the prosecution in the aforesaid departmental proceeding, namely, Ms. Preeti Shree who has stated that her father Shri Yugal Kishore Gupta, the decree holder, was ill and was undergoing treatment at Patna, as such was not available on 14.12.2003, the date fixed for delivery of possession and had returned to Bhagalpur only on 24.12.2003. The learned senior counsel for the petitioner has submitted that the said witness has nowhere deposed that the petitioner had demanded any bribe for affecting delivery of possession. Lastly it is submitted that since the charge of demand of bribe from the aforesaid Ms. Preeti Shri has been found to be false, the other charge regarding the petitioner being

careless, negligent and having acted in a manner so as to defeat the writ issued by the court of Munsif - II, for execution of the delivery of possession, also stands unsubstantiated, hence will be considered to have not been proved. The learned Senior counsel has thus submitted that the enquiry report is perverse and fit to be set aside, consequently the order of punishment dated 11.07.2005 as also the appellate order, as communicated to the petitioner vide letter dated 7.8.2006 are fit to be quashed.

8. *Per contra*, the learned counsel appearing for the respondent no.2 has submitted that the petitioner was/ is ex-clerk of Civil Court, Bhagalpur, who was made Incharge Nazir of Civil Court, Bhagalpur Sadar since 22.11.2003 to 19.12.2003 vide order dated 22.11.2003 in view of the fact that the permanent Nazir of the court was on leave. The petitioner herein, being Incharge Nazir of Civil Court, Bhagalpur, had received a warrant dated 01.12.2003 issued by the Munsif-2nd, Bhagalpur in T. Execution No. 17/99 arising out of T. Ev. Case No. 26/93 to deliver possession of land to the decree holder namely Sri Yugal Kishore Gupta with a direction to execute delivery of possession with the help of Magistrate and Police force by breaking lock, if the premises is found locked. It has been stated that the petitioner had failed to give any information

or notice to the decree holder/ his representative/ his Advocate or any identifier till 13.12.2003 to the effect that execution of the delivery of possession would be held on 14.12.2003, hence the delivery of possession could not be executed on the date fixed in absence of the decree holder/ his representative/ his Advocate or his identifier. The petitioner had also failed to ensure deployment of police force and instead of confirming deployment of the same, he proceeded for execution of delivery of possession on 14.12.2003, which is a clear indication of the ill-motive of the petitioner to frustrate the process of execution. Even during the course of the enquiry proceeding, Ms. Preeti Shree was examined as prosecution witness no.1 and had supported her allegation to the effect that the aforesaid three peons were sent by the petitioner to demand bribe from her so that the delivery of possession could be affected. It is further submitted that the proper procedure required to be followed, has been adhered to by way of holding of a full fledged departmental proceeding, examination and cross examination of prosecution witnesses and thereafter, the enquiry officer has come to a finding that the charge against the petitioner has been established. Only then, a show cause notice was issued to the petitioner on 02.06.2005 in which tentative punishment, likely

to be imposed upon the petitioner, was mentioned and the petitioner was granted liberty to file a show cause reply whereafter the impugned order dated 11.07.2005, inflicting punishment of dismissal from service has been passed by the District Judge, Bhagalpur.

9. It is thus submitted by the Ld. counsel for the respondents that there has been no procedural irregularity in conduct of the departmental proceeding, as against the petitioner herein, leading to passing of the impugned order of punishment dated 11.07.2005 and moreover, this Court cannot sit in appeal over the findings of fact recorded by the enquiry officer in a properly conducted departmental enquiry and re-appreciate the evidence. Thus it is submitted that the impugned order of punishment dated 11.07.2005 requires no interference.

10. I have heard the learned senior counsel for the petitioner as also the learned counsel appearing for the respondents and have also perused the materials on record.

11. At the outset, it would be worthwhile to consider the Law laid down by the Hon'ble Apex Court, on the subject matter under consideration in the present proceedings. Firstly, this Court would refer to a judgment rendered by the Hon’ble Apex Court, reported in *(1995) 6 SCC 749 (***B.C. Chaturvedi**

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Vs. Union of India & Ors.), paragraph-12 whereof is reproduced herein below:-

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-*

appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

12. The Hon'ble Apex Court, in the case of Bank of India and another v. Degala Suryanarayana, reported in (1999) 5 SCC 762, in paragraph-11 has held as follows:-

"11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction

of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon re-appreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. ...."

13. Now coming to the constitution Bench Judgment, rendered by the Hon'ble Apex Court, in the case of **Union of India vs. H.C. Goel,** reported in AIR 1964 Supreme Court 364, it would be pertinent to reproduce relevant portion of paragraph No. 23 thereof herein below:-

"...... The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that charge No. 3 was proved against him? In exercising its jurisdiction under Art. 226 *on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter*

> *which is within the competence of the authority which dealt with the question;* ***but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent?*** *This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence."*

14. The Hon'ble Apex Court in the case of ***Lalit Popli vs. Canara Bank & Ors***., reported in ***(2003) 3 SCC 583*** has held in paragraph Nos. 16 to 19, as follows:-

> *"16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct*

*as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (*See State of Rajasthan v. B.K. Meena*.) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of proof beyond doubt has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.*

17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

18. In B.C. Chaturvedi v. Union of India the scope of judicial review was indicated by stating that review by the court is of decision-making process and where the findings of the

disciplinary authority are based on some evidence, the court or the tribunal cannot re-appreciate the evidence and substitute its own finding.

19. As observed in R.S. Saini v. State of Punjab in paras 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits. It was noted as follows:

> *"16. Before adverting to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.*
>
> *17. A narration of the charges and the*

reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non- application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard. [Emphasis Supplied]"

15. In yet another judgment rendered by the Hon'ble Apex Court in the case of ***M.V. Bijlani v. Union of India & Ors***., reported in ***(2006) 5 SCC 88***, it has been held in paragraph-25 as follows:-

"25. It is true that the jurisdiction of the court

> *in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."*

16. The Hon'ble Apex Court in the case of **Union of India & Ors. vs. P. Gunasekaran**, reported in (2015) 2 SCC 610 has held in paragraph-12 and 13 as follows:-

> *"12. .... In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-*

appreciation of the evidence. 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.

13. Under Articles 226/227 of the Constitution of

India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience."

17. A bare perusal of the law laid down by the Hon'ble Apex Court in the aforementioned cases, would show that the findings of the Enquiry Officer arrived at in his enquiry report can be interfered with, provided findings are perverse or it is a case of no evidence, however, if there is some evidence to support the conclusion of the enquiry officer, no interference can be made by the High Court under Article 226 of the Constitution of India inasmuch as adequacy of evidence cannot be subject matter of judicial review.

18. A bare perusal of the report of the enquiry officer dated 22.03.2005 demonstrates that the authoritativeness and reliability of the prosecution witness no.1, namely, Ms. Preeti

Shree has not only been brought under a cloud by the Enquiry Officer but the said witness has also been disbelieved and that is why the Enquiry Officer has exonerated the petitioner and others from the charges of demanding bribe from the allegationist Ms. Preeti Shree. If that be so than the other charge regarding the petitioner being negligent and careless in not making proper arrangement of police force for affecting delivery of possession and instead submitting a false report for extraneous considerations, is also bound to fall since the Enquiry Officer has failed to lay his hand on any evidence in support of the said charge and moreover, he has not congregated any motive attributable to the petitioner herein so as to prove the said charge apart from him having not found any material to disprove the letter dated 09.12.2003, written by the petitioner to the Superintendent of Police, Bhagalpur, requisitioning police force for deputation on 14.12.2003 as also the letter dated 09.12.2003 written to the Sub-Divisional Officer, Bhagalpur for deputation of the Executive Magistrate and Armed Force on 14.12.2003 at 7:00 A.M. for the purpose of affecting delivery of possession, in pursuance whereof the Sub-Divisional Officer by an order dated 13.12.2003 had not only deputed a Executive Magistrate but had also requisitioned

police force and copy of the said order dated 13.12.2003 was sent to the Deputy Superintendent of Police, Bhagalpur as also to the Officer in Charge, Kotwali, Bhagalpur for information and necessary action. Therefore, there is no material, much less any evidence in the enquiry report dated 22.03.2005 to prove the charge levelled against the petitioner regarding him being negligent and careless, having not made proper arrangement of police force for affecting the delivery of possession and submitting false report for extraneous considerations. In fact, it has also been admitted in the counter affidavit filed on behalf of the respondents no. 2 and 3, duly sworn by the Registrar, Civil Court, Bhagalpur, particularly in paragraph No. 8, that the petitioner upon receiving the warrant of affecting delivery of possession had sent requisition dated 09.12.2003 to the Superintendent of Police, Bhagalpur for deputation of Police force and another requisition was also sent on the same day to the Sub-Divisional Magistrate, Bhagalpur Sadar for deputation of Magistrate, fixing the date of execution as 14.12.2003, hence, this Court is of the opinion that nothing remains for speculation and consequently comes to a finding that there is no evidence on record to substantiate the first charge levelled against the petitioner to the effect that he had negligently and

carelessly not made proper arrangement of police force for affecting the delivery of possession and with the intention to defeat the writ, he had submitted false report for extraneous considerations, thus the findings of the enquiry Officer qua the charge no.1, framed by the District Judge, Bhagalpur vide order dated 23.09.2004 are held to be perverse, therefore, are set-aside. The charge no.2 has already been found by the Enquiry Officer to have not been proved and this finding of the Enquiry Officer has not been adverted to or controverted by the disciplinary authority, as such this Court finds that the charge no.2 has also failed, qua the petitioner herein.

19. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, this Court comes to a conclusion that the finding of facts arrived at by the enquiry officer in his enquiry report dated 22.03.2005 qua the Charge No. 1, as aforesaid, is based on no evidence and even if the entire evidence led in the enquiry is accepted as true, it cannot be concluded that the charge No. 1 stands proved against the petitioner, hence the enquiry report dated 22.03.2005 stands quashed as far as the Charge No. 1 is concerned. As far as charge no.2 is concerned, the same has not been found, by the Enquiry Officer, to have been proved.

As a result of quashing of the adverse portion of the enquiry report dated 22.03.2005, the order of punishment dated 11.07.2005, whereby the petitioner has been inflicted with the punishment of dismissal from service and which is solely based on the adverse findings arrived at by the enquiry officer in the aforesaid enquiry report dated 22.03.2005, which has already stood quashed, has got no legs to stand, hence, is accordingly set aside. Consequently, the appellate order, communicated to the petitioner vide letter dated 07.08.2006, is bound to fall and the same also stands quashed, especially in view of the fact that the Counter Affidavit filed on behalf of the respondent No. 1 shows that the Appeal of the petitioner has been rejected by a single line order without assigning any reasons, in violation of the well accepted principles of Law.

20. In view of setting aside of the enquiry report dated 22.03.2005, the order of punishment dated 11.07.2005 and the appellate order, as communicated to the petitioner vide letter dated 07.08.2006, since the present case has been found to be a case of wrongful termination of the service of the petitioner herein, the question that now arises for consideration is regarding the issue of back wages. In this regard it would be apt to refer to a judgment reported in ***(2013) 10 SCC 324 (Deepali***

Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya & Ors.), paragraphs No. ***38 to 38.****7* whereof are reproduced herein below:-

> *"38. The propositions which can be culled out from the aforementioned judgments are:*
> *38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
> *38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
> *38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/ workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same*

or substantially similar emoluments.
38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.
38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.
38.6. In a number of cases, the superior courts

have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees 7.

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal that on reinstatement the employee/ workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three- Judge Benches7,8 referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

21. Thus, in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. It is also a trite law that onus lies on the employer to specifically plead and prove that the employee was gainfully employed, which the respondents in the present case have failed

to do so. Another factor to be considered is that in case the employer is guilty of victimizing the employee or workman, then the court concerned will be fully justified in directing payment of full back wages. I find that the present case is a case of gross injustice meted out to the petitioner herein by the respondents and the materials on record sufficiently demonstrates that the petitioner has been victimized, as such I am of the view that as a consequences of the quashing of the enquiry report, order of punishment and the appellate order, the petitioner is entitled to full back wages w.e.f. the date of his suspension i.e 23.09.2004 till the date of superannuation along with all consequential benefits.

22. The writ petition stands allowed with a direction to the respondents to pay the back wages w.e.f. the date of his suspension i.e 23.09.2004 till the date of superannuation of the petitioner along with all consequential benefits within a period of two months from today.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	31-08-2018
Uploading Date	18.08.2020
Transmission Date	NA