

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7332 of 2020

=====

Ajoy Kumar Sinha S/o- Basudeo Sinha Resident of Flat no. 302 Dayal Niketan, Tilak Marg, North Sri Krishna Puri, P.O.- Patliputra, P.S.- S.K. Puri, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through Chief Secretary, Government of Bihar at Patna.
2. The Secretary Public Health Engineering Department, Government of Bihar, Patna.
3. The Joint Secretary Public Health Engineering Department, Government of Bihar, Patna.
4. The Principal Secretary General Administration Department, Government of Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Sourav Suman
Mr. Sanchay Srivastava, Advocates
For the Respondent/s : Mr.Arvind Ujjwal, SC-4

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 04-01-2021

The petitioner has sought for quashing of a resolution dated 17.06.2020, whereby it has been decided to initiate disciplinary proceeding against him under Rule 17(2) of the Bihar Government Servant (Classification Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'). By the said resolution, the Chief Enquiry Commissioner, General Administration Department has been appointed as Inquiring authority and Executive Engineer as the Presenting Officer. The allegation against the petitioner relates to the period (2008-



2011) when he was posted as Executive Engineer, Public Health Division, in relation to the works arising out of separate four agreements.

2. A counter affidavit has been filed on behalf of the State of Bihar.

3. I have heard Mr. Sourav Suman and Sanchay Srivastava, learned counsel for the petitioner and Mr. Arvind Ujjwal, learned Standing Counsel No.4, learned counsel, representing the State of Bihar.

4. On conjoint reading of the pleadings on record it has emerged that a complaint was received in the Department in respect of quality of hand pumps in PH Division, Gaya, based on which a Three-Man Committee was constituted by Department to inquire into the work relating to four agreements noted above. The Three-Man Inquiry Committee submitted its report on 17.09.2012 with a finding that under the agreement, the goods had to be used only if they were found in conformity with the standard specification after third party inspection. The Committee found that the hand pumps installed in PH Division, Gaya were not ISI marked and they were installed in defiance of the terms of agreement. The Inquiry Committee found the petitioner to be negligent in duty and lacking in supervision.



Based on the said Inquiry report of the Three-Man Committee, an explanation was sought from the petitioner on 14.03.2013 in response to which the petitioner has submitted his reply on 02.07.2013. Nearly five years thereafter, a charge-sheet was issued vide letter No. 154 dated 15.02.2018, seeking petitioner's explanation in respect of the allegation. The petitioner did submit his reply on 05.11.2018. It is the case of the respondents-State of Bihar that a Three-Man Committee was thereafter constituted seeking technical opinion in respect of the charges framed against the petitioner and his reply to the charges. After considering the report of the Three-Man Committee, the entire matter has been reviewed by the Department and it has finally been found that the act of the petitioner constitutes negligence in duty and lack of supervision on his part. The petitioner's conduct was also found contrary to the provisions of Bihar Public works Department Code.

5. In support of the writ application, learned counsel appearing on behalf of the petitioner has relied on a Supreme Court's decision rendered in **P.V. Mahadevan Vs. Managing Director, T.N. Housing Board** reported in (2005) 6 SCC 636). He has argued that there has been inordinate delay of eight years in initiation of a departmental proceeding and there is no cogent



explanation for such delay. He has submitted that the impugned decision to initiate disciplinary proceeding has been taken few days before the petitioner's date of retirement, i.e, 30.06.2020. He has contended that initiation of departmental proceeding in 2018 in respect of occurrence of 2008-2011 without any justifiable reason of delay is wholly arbitrary and unreasonable and it, therefore, requires this Court's interference. Learned counsel for the petitioner has also relied on a Supreme Court's decision in case of **State of A.P. Vs. N. Radhakrishan** reported in **(1998) 4 SCC 154** in support of his contention.

6. Mr. Arvind Ujjwal, learned Standing Counsel No.4, representing the State of Bihar, on the other hand, has argued that unless the petitioner is in a position to establish any prejudice caused to him because of delayed initiation of departmental proceeding, merely on the ground of delay, this Court exercising writ jurisdiction may not interfere at the very initial stage of initiation of departmental proceeding. Mr. Ujjwal has relied on Division Bench decision of this Court in the case of **State of Bihar Vs. Kusheshwar Das** reported in **2017(1) PLJR 758** to contend that delayed initiation of departmental proceeding cannot be a ground for interference by this Court.



7. I have carefully perused the impugned resolution dated 17.06.2020. The petitioner is sought to be proceeded against departmentally in terms of the said resolution for being negligent in discharge of his duties and deficient in supervising the work. The allegation against the petitioner is based on the report of the Three-Man Committee submitted in 2013. The petitioner's response was taken on the findings of the report of the Three-Man Committee. The petitioner had submitted his response in 2013 itself. Further the allegation does not particularize the specific duty or role, which the petitioner was required to perform and had failed to perform. There is absolutely no explanation as to why no action was taken for all these years after the petitioner has submitted his response to the report of the Inquiry Committee in 2013 itself and for the first time a charge memo was served on him in 2018. The decision to initiate the departmental proceeding was taken through resolution dated 17.06.2020 hardly two weeks before petitioner was to superannuate with effect from 30.06.2020. The delay does not have any justification. I find force in the submission made on behalf of the petitioner based on the Supreme Court's decision in case of **P.V. Mahadevan**(supra), paragraph 11 of which reads as under:-



“11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”

8. The Supreme Court in case of **P.V. Mahadevan** (supra) has referred to an earlier decision rendered in case of **N. Radhakrishan** (supra). There is hardly no explanation why delay in initiation of the departmental proceeding occurred in



the present case.

9. The Division Bench in case of **Kusheshwar Das** (supra), relied on by the learned Standing Counsel No.4 has no application in the facts and circumstances of the present case. In the said case, the Division Bench had noted the reasons for delay to the effect that the disciplinary proceeding could not be initiated against the petitioner because of pendency of writ application before this Court, which is evident from paragraph 3 of the decision, which reads as under:-

“3. The writ applicant having remained absent for a long period could not lay claim for salary. Such is the finding recorded by the learned Single Judge as well. Therefore, it is not the punishment which has been inflicted upon by the department for long absence of period. It is a natural consequence of long absence departmental proceedings are bound to be initiated so that the act of indiscipline by an employee, such as, the writ applicant, do not go unpunished. The finding of the learned Single Bench that though the Commissioner passed order in the year 2006, the departmental proceedings have not been initiated is not made out inasmuch as soon after the order was passed, the writ application was filed in the month of May, 2006. Once the matter was pending before this Court, any initiation of proceedings would have an act of impropriety. Therefore, non initiation of proceedings on account of pendency of the writ application



cannot be a ground for restraining the department from initiating departmental proceedings against the writ applicant.”

10. Since the allegation against the petitioner is of negligence in discharge of duty and lack of supervision and there is no specific allegation of irregularity or corruption nor there is any specific reference to any failure on his part in discharge of the official duties, in my opinion, it would be unjust and improper to allow the disciplinary proceeding to be initiated and continued at this stage, soon before the petitioner's date of superannuation.

11. The impugned resolution dated 17.06.2020 is accordingly quashed.

12. This application is allowed.

13. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

arun/-

AFR/NAFR	NAFR
CAV DATE	10.12.2020
Uploading Date	16.01.2021
Transmission Date	

