

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7315 of 2002

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1. Lalita Devi, wife of late Anant Prasad Yadav (original petitioner- dead)
 2. Pranaw Kumar
 3. Abhay Kumar
 4. Anjani Kumar All are sons of late Anant Prasad Yadav and are resident of village Tamkulha, P.O. Baraith, P.S.Sonbarsa, District Saharsa
 5. Pratibha Singh wife of Satish Chandra Singh Daughter of late Anant Prasad Yadav, resident of village Kanp, P. S. Rupauli, Distirct Patna
 6. Abha Rani wife of Bijendra Prasad Yadav daughter of Anant Prasad Yadeav, resident of village Kjari, P .S. Chautham, District Khagaria
 7. Shobha Rani wife of Rajesh Kumar daughter of Anant Prasad Yadav, resident of village Mojam Patti, P .S. Barhara Kothi, District Purnea

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner-cum- Secretary, Food Supply and Commerce Department, Bihar, Patna
3. The District Magistrate, Madhepura
4. The District Magistrate, Purnea
5. The Additional Collector, Purnea
6. The Sub- divisional Officer, Madhepura
7. The Sub- divisional Officer, Purnea
8. The District Supply Officer, Banmankhi, Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 25-06-2015

IA No.4938 of 2012 is for substitution of the petitioner by the legal heirs whose names figure in paragraph 1. The said IA and substitution is allowed.

After a departmental proceeding was held against the erstwhile petitioner, who was a Supply Inspector, for a set of charges, which are annexed as Annexure- 5, punishment of withholding of three annual increments as well as non- grant of salary for the period

of suspension except subsistence allowance came to be passed. The order is Annexure- 15 and dated 6th of November, 2001. Writ was filed seeking quashing of the said order.

The Court has gone through the set of charges as well as the enquiry report. There seems to be evidence to support the charges that there was dereliction of duty and lack of complete control over the affairs of distribution of kerosene by PDS dealers in the area petitioner was supposed to exercise control and authority. All the charges basically relate to the same said omission to perform or exercise control, which was having a negative fall out on the consumers attached with various PDS dealers. A flying squad of the department made a surprise inspection and the inspection report indicated the omissions, which formed the basis for drawing up the set of charges against the petitioner.

It cannot be a case of the petitioner that he was an efficient and upright officer, who was committed to the responsibility, which was thrust upon him, for proper distribution of kerosene amongst the beneficiaries attached to the PDS dealers. It cannot be the same story every time that the PDS dealership was being given a free run, the beneficiaries were not being allocated their rightful quota of the kerosene and the petitioner remained a mute spectator of the going on.

The submission of the counsel that there is no allegation

of any giving or taking of money is not required to be examined. Non- performance at times and non- assertion of authority also proves beneficial in such matters. There is an underline kind of presumption in this regard.

But since the issue is confined to the petitioner's performance as a Supply Inspector in the area where he was posted i.e. Banmankhi, Purnea, the least of the punishment of withholding of increment with cumulative effect is not required to be interfered. However, the second punishment where the petitioner's salary for the period of suspension was withheld may be required to be quashed for the reason that there is no material available on record that Rule 97 (3) of the Bihar Service Code was followed as has been held in many a cases by this Hon'ble Court earlier, which are reported in 2003 (4) PLJR 68 and 1988 PLJR 82.

The writ application is allowed to the extent that the second punishment of non-grant of salary for the period of suspension is set aside. Since the petitioner is no more, the matter cannot be remanded back on this score but no interference is warranted with regard to first punishment.

(Ajay Kumar Tripathi, J)

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