

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15537 of 2006

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Ajay Kumar Singh No.1, son of late Ram Bahadur Singh, of village Hardia, P.S. Singhia, District Samastipur at present posted as Bench Clerk in the court of Sri V.K.Srivastawa, Judicial Magistrate, 1st Class, Rosera, District Samastipur

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Personnel and Administrative Reforms Department, Patna
2. The District and Sessions Judge, Samastipur
3. The 1st Addl. District and Sessions Judge, Samastipur
4. The Additional District Judge (F.T.C.)-II, Samastipur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rakesh Samrendra, Adv.
Mr. Pranav Kumar, Adv.

For the Respondent/s : Mr. Vijay Kumar Verma, AC to GA3

For respondents no.2 to 4 : Mr. Satyabir Bharti, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

7 03-08-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

“(i) A writ, in the nature of writ of certiorari/ any other appropriate writ/ order/ direction be issued for quashing the order no. 135 (Admn) of 2006 contained in memo no. 6305-13 dated Nov. 10th, 2006 issued under the signature of respondent no.2 inflicting punishment of withholding three increments with cumulative effect coupled with a further punishment that the petitioner would not be considered for promotion for next six years.

(ii) That a writ in the nature of writ of mandamus/ any other appropriate writ/order/ direction be issued commanding the respondents to pay the salary to the petitioner for the period between 17.8.2004 to 2.6.2006

after deducting the amount of salary paid as subsistence allowance to the petitioner during the said period during which he placed under suspension.”

2. Having regard to the seriousness of the charges which were framed against the petitioner, a Bench Clerk in the court of Sub-Judge I, Rosera, where a record of T.S.No. 76/2001 went missing, this Court does not find any procedural error in the departmental enquiry and the consequential order of punishment of withholding three increments.

3. The submission of Mr. Rakesh Samrendra, learned counsel appearing on behalf of the petitioner, that there is no evidence in support of the charge is also difficult to be believed for a simple reason that a Bench Clerk remains out and out responsible for upkeep, maintenance and safety of the records of the concerned court. Here in this case whatever defence was taken by the petitioner in capacity of Bench Clerk by shifting responsibility on the office Clerk will also be of no avail because both the petitioner in capacity of Bench Clerk and the Office Clerk, namely, Abhay Kant Paswan, have been held to be guilty and have been punished by the same order which again is similar punishment.

4. The very fact that even if the submission of the learned counsel is accepted no plausible explanation can be given by the



petitioner that when on 18.8.2013 the records were definitely produced before the court its either being not returned to the Office Clerk and vice versa cannot lead to exoneration of the petitioner from his responsibility and duty. The petitioner was a Bench Clerk and therefore, he had to also share the blame equally with the Office Clerk for the file being lost. Thus, on the basis of discussion made by the Enquiry Officer in the enquiry report when the charges were found to be proved, this Court will also not find any error in the order passed by the disciplinary authority who had only agreed with the finding of the Enquiry Officer.

5. The petitioner has already retired from the service after having undergone the consequence of the order of punishment which was in form of stoppage of three increments or withholding of promotion. This Court, therefore, does not find the punishment also to be harsh keeping in view the nature of misconduct that was alleged against him. If the persons on whom there was responsibility of security of records were found to be even negligent leading to loss of the original records, the confidence of the litigant as a whole will be lost in the system. This Court would not like to ascribe motive against the petitioner but it can very well be said by the litigants that their records were deliberately made to disappear. Reconstruction of the records in the civil cases can also



never be complete because the original document produced by the parties can never be reconstructed. It is here that duty of the post of Bench Clerk becomes very important and considering all these aspects this Court will not find the punishment inflicted on the petitioner to be either harsh or disproportionate.

6. This Court, however, would find force in the submission of the learned counsel for the petitioner that after the petitioner was reinstated in service upon revocation of his order of suspension on 2.6.2005 the disciplinary authority while passing of the order of punishment was required to record reason as with regard to suspension period being treated otherwise on duty. That is the requirement of Rule 97(3) of the Bihar Service Code and therefore, since the petitioner stands deprived for payment of salary for the period of suspension from 17.8.2004 to 2.6.2005, he has a legitimate grievance that a separate order ought to have been passed with regard to the payment of salary for the period of suspension and its being treated otherwise on duty.

7. While this Court would not like to prejudge the aforesaid issue but then having found that the disciplinary authority i.e. District and Sessions Judge, Samastipur had not passed any separate order for the period of suspension it would direct that necessary order for treating the period of suspension of

the petitioner in terms of Rule 97(3) of the Bihar Service Code must be passed within a period of three months from the date of receipt of this order.

8. It however goes without saying that if the salary of the petitioner for the period of suspension beyond subsistence allowance is found payable under the order of the District and Sessions Judge its payment shall also be made to the petitioner in next one month from the date of the order. If, on the other hand, such payment of salary is refused for any ground, that also must be recorded and before doing so an opportunity by way of a show cause notice must be given to the petitioner as is again requirement of Rule 97(3) of the Bihar Service Code.

9. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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