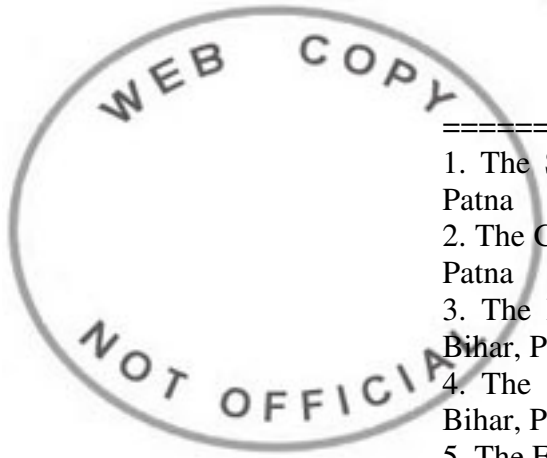




IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.31 of 2014
In
Civil Writ Jurisdiction Case No. 3964 of 2007

- =====
1. The State Of Bihar Through Chief Secretary, Government Of Bihar, Patna
 2. The Commissioner, Water Resources Department, Government Of Bihar, Patna
 3. The Deputy Secretary, Water Resources Department, Government Of Bihar, Patna
 4. The Special Secretary, Water Resources Department, Government Of Bihar, Patna
 5. The Engineer-In-Chief, Water Resources Department, Bihar, Patna
 6. The Chief Engineer, Water Resources Department, Bhagalpur
 7. The Superintending Engineer, Water Resources Department, Plan And Monitoring Circle - 2, Patna

.... Appellant/s

Versus

1. Vishnu Dayal Singh Son Of Late Ram Pratap Singh At Present , Assistant Engineer, Gandak Design Division No. 3, Siwan, P.S. Siwan, District Siwan

.... Respondent/s

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with

Letters Patent Appeal No.215 of 2014
IN
C. REV. 1 of 2012

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1. The State Of Bihar Through Chief Secretary, Government Of Bihar, Patna
2. The Commissioner, Water Resources Department, Government Of Bihar, Patna
3. The Deputy Secretary, Water Resources Department, Government Of Bihar, Patna
4. The Special Secretary, Water Resources Department, Government Of Bihar, Patna
5. The Engineer-In-Chief, Water Resources Department, Bihar, Patna
6. The Chief Engineer, Water Resources Department, Bhagalpur
7. The Superintending Engineer, Water Resources Department, Plan And Monitoring Circle- 2, Patna

.... Appellant/s

Versus

1. Vishnu Dayal Singh Son Of Late Ram Ratap Singh At Present, Assistant Engineer, Gandak Design Division No. 3, Siwan, P.S. Siwan, District-Siwan

.... Respondent/s

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Appearance :

(In LPA No.31 of 2014)

For the Appellant/s : Mr. Lalit Kishore,
Principal Additional Advocate General

For the Respondent/s : Mr. Rajendra Prasad Singh, Sr. Advocate
(In LPA No.215 of 2014)

For the Appellant/s : Mr. Lalit Kishore,
Principal Additional Advocate General

For the Respondent/s : Mr. Rajendra Prasad Singh, Sr. Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

9 17-08-2015

1. The only question which requires determination in the present two appeals preferred by the State of Bihar under Clause 10 of the Letters Patent of the High Court, is, as to whether the Chief Minister of Bihar can be said to be the appellate authority, over an order of punishment passed in a disciplinary proceeding by the competent authority, with respect to an employee of the State Government working as an Assistant Engineer, Irrigation Division (Bihar Engineering Service Class II) under Civil Service (Classification, Control & Appeal) Rules, 1930 (hereinafter referred to as 1930 Rules).

2. The sole respondent in both the cases was, at the relevant point of time, posted as an Assistant Engineer, Irrigation Sub Division, Kharagpur under Irrigation Division, Tarapur of



Water Resource Department, Government of Bihar, during the year 2000-2001. He was in additional charge of Kharagpur Lake and its gate operation system. On the ground that because of negligence and carelessness on his part, there occurred breach of Dyke and banks of the said lake, the respondent was put under suspension by an order, dated 07.07.2001, and a disciplinary proceeding was initiated against him, under Rule 55 of the 1930 Rules, vide Departmental Resolution No. 2125, dated 06.09.2001. The Inquiry Officer held the charge against the respondent as not proved. The State Government of Bihar, disagreeing with the findings and conclusion of the Inquiry Officer, issued notes of disagreement to the respondent annexing copy of the report of the Inquiry Officer, as according to the competent authority, the charge against the respondent could be said to be proved on the basis of materials available on record of the disciplinary proceeding. The respondent submitted his explanation to the said written notes of disagreement, which was examined at the level of State Government but was not found satisfactory. The State Government of Bihar, therefore, decided to impose following punishments upon him, as per the notification issued vide memo no. 560, dated 05.08.2004:-

“i) Censure for the year 2000-2001

ii) *Withholding of two increments with non cumulative effect.*

iii) *Except subsistence allowance, nothing will be paid for the period of suspension, but it will treated to be pensionable service .*

iv) *No posting in 'works' shall be given to him for next ten years.*

v) *Stoppage of promotion for five years from due date of promotion.*

vi) *After revocation of suspension, Sri Vishnu Dayal Singh, Assistant Engineer, will give joining at Heard Quarter. (Irrigation Bhavan, Patna)."*

3. We must, indicate here, as would be apparent from the said memo no. 560, dated 05.08.2004, that decision to disagree with the findings of Enquiry Officer was taken at the Government level. The respondent's explanation to the notes of disagreement was examined, and decision to impose punishments on him, as indicated above, were taken at the level of the State Government.

4. The respondent, thereafter, submitted a representation, dated 04.10.2004, addressed to the Deputy Secretary, Water Resources Department, Government of Bihar. The said representation of the respondent was considered at the level of the Government, whereafter the earlier order, dated 05.08.2004, imposing punishment was decided to be modified by

dropping punishment No. (ii) of withholding of two increments with non-cumulative effect. An order to this effect was issued on 23.06.2006, vide memo No. 653.

5. Aggrieved by the aforesaid two orders, dated 05.08.2004 and 23.06.2006, issued by the Department of Water Resource Government of Bihar, the respondent filed writ application under Article 226 of the Constitution of India before this Court, giving rise to CWJC No. 3964 of 2007. Learned single Judge considering the impugned orders to have been passed by the State Government, with the approval of the Departmental Minister, was of the view that the petitioner had remedy of appeal before the Hon'ble the Chief Minister, which remedy he had not availed. Learned single Judge accordingly, disposed of the aforesaid writ application, granting liberty to the respondent to challenge the aforesaid two orders, dated 05.08.2004 and 23.06.2006, by filing appeal before "appellate authority, namely, Hon'ble the Chief Minister", with an observation that such appeal should be considered in accordance with law, as early as possible, in any case within a period of two months from the date of receipt of memo of appeal in the Secretariat of the Chief Minister. We consider it appropriate to quote relevant portion of the order dated

28.09.2011, passed by the learned single Judge in CWJC No. 3964 of 2007:-

“Aforesaid two orders dated 5.8.2004 and 23.6.2006, Annexures-1,2 have been passed with the approval of the Government, meaning thereby with the approval of the Departmental Minister, as petitioner was the member of the Bihar Engineering Service, Class-II.

Against the order of Departmental Minister, petitioner has a remedy of appeal before Hon’ble Chief Minister which remedy petitioner has not availed so far, as is evident from not only the writ petition but also the counter affidavit filed on behalf of Respondent Nos. 2-5. In the circumstances, the writ petition is disposed of granting liberty to the petitioner to challenge the aforesaid two orders dated 5.8.2004, 23.6.2006, Annexures 1,2 by filing appeal before the appellate authority, namely, Hon’ble Chief Minister, which should be considered in accordance with law, as early as possible, in any case within a period of two months from the date of receipt of the memo of appeal in the Secretariat of the Hon’ble Chief Minister.”

6. The State of Bihar thereafter, preferred a petition before this Court, seeking review of the order, dated 28.09.2011,



passed in CWJC No. 3964 of 2007, giving rise to Civil Review No. 1 of 2012, primarily, on the ground that the Chief Minister is not the appellate authority under 1930 Rules, who could consider the appeal against decision of the State Government to impose punishment, and therefore, the respondent ought not to have been asked to prefer appeal before the Chief Minister and the Chief Minister ought not to have been, in turn, asked to dispose of the said appeal of the respondent. Learned single Judge by an order, dated 17.04.2013, dismissed Civil Review No. 1 of 2012 holding as follows:-

“Aforesaid Rule was enacted prior to coming into force of the Constitution. The provisions of the aforesaid rules are required to be considered and interpreted in the light of the Constitutional provisions which required the Governor of the State to act on the aid and advice of the council of Ministers except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion. Reference in this connection may be made to paragraphs 88, 153 of the judgment of the Supreme Court in the case of Shamsher Singh Vs. State of Punjab and another, AIR 1974 SC 2192. In the circumstances, I am not inclined to review the

order dated 28.9.2011. The Review Petition is dismissed.”

7. In the background of aforesaid facts, the present two appeals have been preferred by the State Government of Bihar aggrieved by aforesaid two orders passed by learned single Judge. The order dated 28.9.2011 passed in CWJC No. 3964 of 2007 is under appeal in LPA No. 31 of 2014 whereas order dated 17.4.2013 passed in Civil Review No. 1 of 2012 is under appeal in LPA No. 215 of 2014.

8. I.A. No. 99 of 2014 has been filed seeking condonation of delay in preferring LPA No. 31 of 2014 and I.A. No. 926 of 2014 has been filed seeking condonation of delay in preferring LPA No. 215 of 2014.

9. Having considered the statements made in the limitation applications, we are satisfied that for the reasons stated therein and in the interest of justice, the delays in preferring the two appeals deserve to be condoned and accordingly the delay in preferring LPA No. 31 of 2014 and LPA No. 215 of 2014 are condoned. I. A. No. 99 of 2014 and I. A. No. 926 of 2014, thus, stand allowed.

10. Before we proceed to consider rival submissions



made on behalf of the parties, we must indicate that there is no dispute that as on the date when the disciplinary proceeding was initiated against the respondent and on the day when punishment, dated 05.08.2004, was imposed upon him, Civil Services (Classification, Control & Appeal) Rules, 1930, regulated disciplinary action against the employees of the State Government, other than members of the Subordinate Service. Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 2005 Rules) came into force, with effect from 13.07.2005. This is to be noted that before 2005 Rules came into force, the respondent had preferred representation against the order, dated 05.08.2004. The said representation was disposed of on 23.06.2006, modifying the initial punishment, after 2005 Rules came into force. The decision to modify punishment was also taken at State Government level. No dispute has been raised on behalf of the parties that under the subsequent 2005 Rules, there is no provision of appeal against the orders of the Government, which however, permit filing of review petitions in the form of memorials. As is apparent from the orders of the learned single Judge, dated 28.09.2011, passed in CWJC No. 3964 of 2007, he noticed that the orders were passed with the approval

of the government. Learned single Judge meant such approval to be an approval of the Departmental Minister and, therefore, according to him appeal lied before the Chief Minister Bihar.

11. Mr. Lalit Kishore, learned Principal Additional Advocate General, representing the appellants State of Bihar has submitted that the disciplinary proceeding against the respondent was conducted under 1930 Rules which does not contain any provisions of appeal before the Chief Minister. He has submitted that Part III of the said 1930 Rules, dealt with appeal against orders imposing punishment and according to him, Chief Minister of the State had not been designated as an appellate authority. He has further submitted that the disciplinary proceeding against the respondent, having been dealt under old 1930 Rules, 2005 Rules shall have no application in his case.

12. Mr. Rajendra Prasad Singh, learned Senior Counsel appearing on behalf of the respondent in both the cases has, on the other hand, submitted that learned single Judge rightly applied the principle laid down by Supreme Court in case of *Samsher Singh Vs. State of Punjab and another* (AIR 1974 SC 2192), by asking the Chief Minister to dispose of the appeal as according to him, Rule 57 of 1930 Rules provides for remedy of

appeal by a member of provincial service to the Governor of the State and since the Governor of the State is required to Act on the aid and advice of the Council of Ministers, learned single Judge has rightly allowed the respondent to prefer an appeal before the Chief Minister, who is the head of the Council of the Ministers.

13. Mr. Singh has further contended that in any view of the matter, the orders, dated 05.08.2004 and 23.06.2006, imposing punishments upon the respondent are unsustainable inasmuch as the procedure adopted by the disciplinary authority was in violation of law laid down by the Supreme court in case of ***Punjab National Bank vs. Kunj Bihari Mishra reported in (1998) 7 SCC 84***. He has accordingly, submitted that the orders imposing punishment upon the respondent deserve to be set aside.

14. We would first consider the submission made on behalf of the Appellants State of Bihar as to whether the Chief Minister of Bihar can be held to be the appellate authority under 1930 Rules, against decision of imposition of punishment, taken by the State Government upon a person holding the post of Assistant Engineer, in the cadre of Bihar Engineering Service, Class II. We are not required to deal with the provisions in this regard as contained in subsequent 2005 Rules, which are

admittedly not applicable in the present case, Disciplinary proceeding, having been initiated before coming into force of 2005 Rules. Rule 57(5) of 1930 Rules, which is relevant for the present case is being quoted, hereinbelow:-

13. Rule 57. (5) A member of a Provincial service, or a member of a Specialist service under the administrative control of the Local Government of a Governor's Province, may appeal to the Governor from an order passed by the Local Government.” (emphasis added)

15. From bare reading of the said provision, it would appear that a member of Provincial service or a member of a Specialists service under the administrative control of local government of Governor's Province had a right to prefer appeal to the Governor from an order passed by the local Government. Here we pause and pose a question to ourselves as to whether it can be conclusively held that the respondent is/was a member of Provincial Service or Specialist within the meaning of 1930 Rules? The question of his right to appeal under Rule 57 of 1930 Rules to the Governor would arise only if he is in a position to satisfy this Court that he was a member of Provincial service. Provincial Service and Specialist has been defined under Rule 18

and 19 of the 1930 Rule which reads thus:-

“18. The Provincial Services shall consist of such services (other than the services included in Schedule I) under the administrative control of the Local Government of Governor’s Province as the Local Government may from time to time declare, by notification in the local Official Gazette, to be included in the Provincial Services of the province:

(emphasis added)

Provided that one of the services so included shall be entitled the General Service.

19. The Specialist services shall consist of such services (other than All India Central or Provincial Services) under the administrative control of the Governor-General in Council or the Local Government of a Governor’s province, as the Governor General in council or local Government may, from time to time, by notification in the Gazette of India or local official Gazette declare to be Specialist Services:

Provided that once the Services so included shall be entitled the General Service.”

16. From Rule 18 of 1930 Rules, it would be evident that Provincial services, consist of a such services as the local Government may from time to time declare, by notification in the official Gazette, to be included in the Provincial Services of the



Province. Nothing has been brought to our notice to establish or suggest that the service to which the respondent belonged was declared to be a Provincial Service or Specialist Service by any notification in local Official Gazette under Rules 18 & 19 of 1930 Rules. In our opinion, therefore, it cannot be held that the respondent had any statutory right to prefer appeal before the Governor against the said order of punishment, before the Governor. In our opinion, therefore, the reason assigned by the learned single Judge in the order under appeal dated 17.4.2013 passed in Civil Review No. 01 of 2012, relying on Supreme Court decision in Case of *Samsher Singh vs. State of Punjab and another* (supra) does not appear to be correct. The question of application of the said decision would have arisen only if it could be conclusively held that the Governor was the appellate authority under 1930 Rules on the basis that the respondent belonged to Provincial Services or Specialist Service. We are therefore of the view that it cannot be held that the service to which the respondent belonged is/was Provincial Service or Specialist Service within the meaning of Rule 18 and 19 of 1930 Rules. In such circumstance, the Governor cannot be held to be the appellate authority and in no circumstance, Chief Minister of the State can be held to be the

appellate authority under Rule 57 of 1930 Rules. In our considered view, the Chief Minister, by virtue of holding the said office cannot be held to be the appellate authority, under 1930 Rules, by any reasoning, the decision to impose punishment having been taken at State Government level; in the absence of any specific statutory provision in this regard.

17. Rule 57 of 1930 Rules came to be considered by Supreme Court in case of *Ranjit Prasad Singh vs. State of Bihar* (AIR 1987 SC 1194) while dealing with the remedy of appeal of a member of Bihar Judicial Service. In the absence of any material to demonstrate that Bihar Judicial Service was designated as one of the Provincial Services specified in Rule 18, the Supreme Court held that appeal before the Governor would not be maintainable. This decision of the Supreme Court supports our view that in the absence of any conclusive material to establish or even suggest that the service to which the respondent belonged was a Provincial Service or State Service, his appeal under Rule 57 of 1930 Rules could not be maintained. True it is that appeal is a valuable remedy, but right to appeal is neither inherent nor fundamental.

18. We are, therefore, left with no option than to interfere with the both the orders, dated 28.9.2011, passed in

WJC No. 3964 of 2007 and order, dated 7.4.2014, passed in Civil Review No. 01 of 2012 by learned single Judge, which are under appeal. In normal circumstance, we could have, remanded the matter back to learned single Judge for considering the writ application on merits, after setting aside the orders under appeal. However, since we have heard the matter at length, on merits also, we intend to deal with the merits of the respondent's case.

19. Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the respondent, has submitted that a disciplinary authority is authorized to impose such punishment only as are prescribed under the disciplinary Rules. He has submitted that various punishments which have been imposed upon the respondent are not prescribed under Rule 49 of 1930 Rules. Mr. Singh appears to be right in his submission.

20. Rule 49 of 1930 Rules reads thus:-

“49. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of the services comprised in any of the classes (1) to 5) specified in rule 14, namely:-

- (i) *Censure.*
- (ii) *Withholding of increments or promotion including stoppage at an efficiency bar.*
- (iii) *Reduction to a lower post or time-scale,*

- 
- or to a lower stage in a time-scale.*
- (iv) *Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.*
 - (iv-a) *Compulsory retirement.)*
 - (v) *Suspension.*
 - (vi) *Removal from the Civil service of the Crown, which does not disqualify from future employment.*
 - (vii) *Dismissal from the civil service of the Crown, which ordinary disqualified from future employment.”*

21. Initially, altogether six punishments were imposed upon the respondent, as has been indicated. Out of them second punishment i.e. withholding of two increments with non-cumulative effect has been dropped subsequently by an order, dated 23.6.2006. Third punishment is to the effect that the respondent shall not be paid any subsistence allowance for the period during which he remained under suspension. This is not one of the punishments as contemplated under Rule 49 of the 1930 Rules. It is a different matter that the disciplinary authority has a jurisdiction to take a decision whether, Government Servant would be entitled for salary during the period he remained under

suspension under Rule 97 of the Bihar Service Code. Such decision could be taken separately but cannot be by way of punishment. Similarly punishment of “Stoppage of posting in work for ten years” is not a punishment contemplated under Rule 49 of 1930 Rules.

22. We have no hesitation, therefore, in interfering with the third and fourth punishment as originally imposed upon him by order dated 5.8.2004. As regards the punishment that respondent will not be promoted for five years from due date, we have been told at the bar that the respondent retired in the year 2010 and nothing has been brought to our notice that any promotion was due to him and because of the said punishment, the interest of the respondent stood adversely affected. Further, we are at a loss as to why “after revocation of suspension, Sri Vishnu Dayal Singh, Assistant Engineer, will give in joining at H.Qr,(Irrigation Bhavan, Patna)” has been shown to be one of the punishments imposed upon the respondent. The action of the appellants in mentioning it as punishment is indicative of the lack of appreciation as to what is punishment and what is not under the extant Rules. Accordingly, we set aside the orders, dated 05.08.2004 and 23.06.2006 and hold that the said orders of

punishment will be confined to the following two:-

(i) Censure for the year 2000-2001.

(ii) Stoppage of promotion for five years from due date.

23. Before we part with, we must indicate that we have not found such lapse or procedural irregularity in conduction of the departmental proceeding against the respondent, requiring this Court to hold the disciplinary action to be wholly illegal. Supreme Court decision in case of Kunj Behari Mishra (supra) does not come in aid to the case of respondent, there being no dispute about the fact that tentative notes of disagreement with the finding of enquiry Officer were supplied to him and he was given due opportunity to deal with the tentative notes of disagreement. We do not find violation of principles of natural justice which caused any prejudice to the case of the respondent.

24. As regards payment of subsistence allowance for the period during which the petitioner remained under suspension, during pendency of departmental enquiry, we direct the appellants to pass an order afresh under Rule 97 of the Bihar Service Code, which must be reasoned and speaking, within a period of three months from the date of receipt/production of a copy of this order.

25. Accordingly, LPA No. 31 of 2014 and LPA 215 of 2014 are allowed. The orders, under appeal, dated 28.09.2011, passed in CWJC No. 3964 of 2007 and the order, dated 17.4.2013, passed in Civil Review No. 01 of 2012, by learned Single Judge are set aside. CWJC No. 3964 of 2007 stands disposed of accordingly, in terms of the order as above.

26. All Interlocutory Applications, namely, I. A. No. 99 of 2014 and I. A. No. 926 of 2014 stand disposed of.

27. There shall, however, be no order as to costs.

(I.A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-AFR

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