

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 909 of 2009

IN

Civil Writ Jurisdiction Case No 8684 of 2000

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Syed Abdur Raheem, son of late M A Hakim, resident of Mohalla – Mulla Haleem
Khan, PO & PS – Darbhanga, District - Darbhanga

.... Appellant/s

Versus

- 1 The Registrar General, High Court of Judicature at Patna
- 2 The District Judge, Darbhanga
- 3 Shri Sadashiv Rao, Enquiry Officer, Munsif –cum- Judicial Magistrate,
Benipur, Darbhanga
- 4 Judge-in-charge, Civil Court, Darbhanga
- 5 The Registrar, Civil Court, Darbhanga

.... Respondent/s

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For the Appellant/s : M/s Alok Kumar Chaudhary, Nagendra Kumar
& Kulanand Jha, Advocates

For the Respondent/s : Mr Piyush Lall, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 31-07-2015

Heard Mr Alok Kumar Choudhary for the appellant
and Mr Piyush Lall for the High Court.

2 This intra-Court appeal is against the judgment and
order of this Court passed by a learned Single Judge in CWJC No
8684 of 2000 delivered on 21.04.2009 by which the learned Single
Judge refused to interfere with the order of dismissal as passed by the
learned District Judge, Darbhanga in respect of the appellant.

3 Having gone through the records and the orders of

the learned Single Judge who has, in great details, noted all the issues raised, we are in agreement with the learned Single Judge that in this appeal, there is no necessity of any indulgence.

4 We would just note that the appellant was a Class III employee in Civil Courts, Darbhanga. He had over two decades of unblemished service when a departmental proceeding was initiated against him for allegedly demanding money to recover judicial files and interpolating bail orders and signing for the Sessions Judge. After enquiry report was submitted holding him guilty on both the counts, the then learned District Judge, noting the seriousness of the charges, noted that the delinquency was sufficient for dismissal but considering his unblemished career, otherwise he took, in our view, an extremely lenient view of the matter and let such a matter go with a flee bite punishment of withholding of two increments with cumulative effect. This was in 1990.

5 In 1994, the appellant made an application to the learned District Judge, Darbhanga stating that increments are due to him on 01st of April every year. He should be granted the increments. On this, there was an endorsement made by the Accountant (not signed by anybody) noting that there being no adverse entry available in the service record, the annual increments, which were due from 1986 upto 1994, be granted. Apparently, on coming to know of this,

the elder staffs were surprised and then it appears that the entire file dealing with the first disciplinary proceeding was traceless and the endorsement in his service book with regard to suspension and punishment were scribbled and overwritten. Thus, a second disciplinary proceeding was initiated for interpolation of service book which was at that time in his custody and for disappearance of records of the first departmental proceeding.

6 Appellant was duly noticed alongwith list of witnesses who were to be examined and dates were fixed. On a particular day, without informing the Enquiry Officer, the appellant remained absent. The enquiry proceeding proceeded and ultimately an adverse report was given. In spite of all efforts, second show cause notice could not be served, for repeated attempts to do the same failed. Ultimately, it was duly proved that the second show cause was duly served upon him and, thereafter, there being no response, the learned District Judge passed the impugned order of dismissal.

7 Let it be noted that against the punishment in the first disciplinary proceeding and the findings recorded therein, the appellant chose not to file any appeal or challenged those proceedings. He allowed it, including the findings therein, to attain finality. As against the second disciplinary proceeding, he again had a right to statutory appeal under Rule 19 of the Bihar Civil Court Staff (Class



III and Class IV) Rules, 1998. This time again, he did not file any appeal. Rule 19 provides for an appeal within 30 days. The order of dismissal was passed on 25.11.1999. Having not preferred appeal and having allowed the time to run out, he filed a writ petition in this Court, the present writ petition after almost a year, that is on 05.09.2000. In our view, this itself was sufficient not to entertain the writ petition. We have noted this only to show that the appellant was given another indulgence to seek justice, bypassing the statutory remedy and the statutory time.

8 As before the learned Single Judge so before us, it is argued that the appellant was denied opportunity to cross-examine. He was not supplied papers and the punishment was grossly disproportionate. The learned Single Judge has dealt with each aspect in detail. I would like to add that if the appellant chooses to absent himself from the proceedings of which he was fully aware and does not inform the Enquiry Officer nor does he subsequently make a grievance and seek recall of witnesses at any point of time, can he, after the proceedings have concluded, make an issue of this? In our view, no. The appellant, as before the learned Single Judge so before us, has not been able to produce a chit of paper or any averment either in the writ petition or in the Memo of Appeal that he ever approached the Enquiry Officer for either recall of the witnesses for cross-

examination or sought copies of deposition or any document at any point of time and he was refused. Thus, on these findings, to allege violation of principles of natural justice, is not tenable.

9 Coming to the question of proportionality of sentence, so far as the second departmental proceeding is concerned, the charges, in our view, are serious enough. There is a clear finding of interpolation in the service book which accrues to the benefit of the appellant. There is a deliberate attempt to mislead the authorities into claiming increment which he had been debarred by way of punishment and in order to achieve the object, the mysterious disappearance of the records of the earlier departmental proceedings, all inuring to the benefit of the appellant.

10 Let us not forget that the appellant was a Class III Civil Courts employee dealing with important and sensitive files and records of citizens. Further, this was not the first time the delinquency was noticed. As notice above, in the first departmental proceeding itself, he was charged and found guilty of demanding illegal gratification and interpolation of bail orders and forging signatures of Sessions Judge. These findings were never challenged by him in any proceeding before any authority. On these facts, requiring this Court to invoke the equitable principles of proportionality of sentence, cannot be accepted.

11 We, thus, find no merit in this appeal. It is,
accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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