

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15794 of 2015

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Kumari Ranjani, W/o Shri Vikas Kumar Srivastava, resident of Village +
P.O.- Bharauli, Bhaya- Narendrapur, P.S.- Andar, District- Siwan
..... Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Saran at Chapra.
3. The District Magistrate, Siwan.
4. The Enquiry Officer-cum-Additional Collector, Siwan
5. The Circle Officer, Siswan, District- Siwan.

..... Respondent/s

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Appearance :

For the Petitioner/s	Shri Prakash Srivastava, Advocate
For the Respondent/s :	Smt. Geeta Kumari, GP 28
	Mr. Amit Bhushan, Advocate.
	Ms. Anu Priyadarshini, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 06-10-2015

Heard learned counsel for the parties.

2. Mr. Prakash Shrivastava, learned counsel for the petitioner, while assailing the impugned order of punishment of dismissal of the petitioner from service as also its affirmation by the appellate authority, had initially tried to question the orders on merit by raising a plea that the violation of the alleged transfer order, which was the subject matter of charge in a departmental proceeding, could never be established because the petitioner was continuing on the basis of interim order passed by this Court in a writ application filed by her. He has then submitted that from the entire order sheet of the departmental proceeding, it would be found that the petitioner was given no effective opportunity of

appearing before the inquiry officer.

3. This Court would not find any merit in either of the two aforementioned submissions. The transfer order, against the petitioner, was issued in the month of July 2011 and the writ application was filed by the petitioner sometime in the month of November, 2012 and, therefore, even if any order of maintaining status quo was passed by this Court in the writ application filed by her that could not be given to the petitioner the liberty to flout the order of the transfer. The order of transfer of the petitioner was never quashed by this Court and, therefore, mere pendency of a writ application with some interim order could be of no avail much less acceptable defence of the petitioner in the departmental proceeding.

4. Learned counsel for the petitioner has also accepted that apart from the aforesaid charges, there were other six charges in which also the petitioner was found to be guilty and one of them was in relation to misappropriation of Government fund.

5. As with regard to the notice of the departmental inquiry, this Court has carefully perused the entire order sheet annexed in the writ application and from them, it becomes very clear that repeated steps of service of notice were taken against the petitioner and in fact all possible recourse was taken by the inquiry



officer to serve the notice on the petitioner but she kept on avoiding service of such notice. As a result whereof, when personal service was sought to be made on the petitioner, she had acknowledged service of notice by filing an application dated 26.07.2013 that she was unwell and should be given time to appear in the inquiry.

6. It is a matter of record that even after 26.07.2013, the inquiry officer had fixed the date of 6th August, 16th August, 22nd August, 15th September, 16th September, 30th September, 6th November, 18th November, 7th December and 13th December, all in the year 2013, but the petitioner did not appear at any of the dates. What really shocks this Court is the defiant attitude of the petitioner inasmuch as when the final notice was sought to be served fixing the date of 13.12.2013, she had, in presence of the Head Clerk and the Peon, who had gone to serve notice on her, informed them that she would speak on telephone with the Additional Collector, the inquiry officer. That apart, she was also found to be violating the specific order of the disciplinary authority, namely, the Collector by questioning his authority

7. Thus, on an overall analysis of the entire order sheet of the departmental proceeding, this Court is satisfied that nothing more could have been done for service of notice and, therefore, if

the petitioner did not appear in the departmental proceeding, she cannot make any premium out of it.

8. The last submission of Mr. Shrivastava that the petitioner had completed more than ten years of service and, therefore, for the charges in question, she ought to have not been given a maximum punishment, is again an aspect which had to be only considered by the disciplinary authority and the appellate authority. This Court cannot substitute its own opinion at least in the matter of quantum of punishment unless such punishment is found to be shocking to the conscience. That however cannot be denied by this Court keeping in view the nature of charges framed against her.

9. The only thing which can be observed in favour of the petitioner is that probably she being the lady and on her own commitment she was not interested in continuing with the job. Thus, if the petitioner had completed more than ten years of service, her appointment, being in the year 1992, the authorities could have inflicted punishment of compulsory retirement which at least could have enabled the petitioner to get some pension, which she now stands deprived on account of order of dismissal from service.

10. Having thus regard to the fact that the petitioner

claims to have a clean record prior to initiation of departmental proceeding, this Court would only direct the appellate authority, namely, the Commissioner to consider quantum of punishment as to whether the order of dismissal can be substituted by compulsory retirement.

11. It is made clear that if the petitioner is compulsorily retired from service in place of dismissal, she will not be entitled for any payment of salary for the interregnum period but only the retirement benefit as is available to a person inflicting with the punishment of compulsory retirement.

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

(Mihir Kumar Jha, J)

Sujit/-

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