

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12472 of 2007

=====

Ram Bachan Pandey son of late Rajeshwar Pandey resident of Mohalla -Hari Kuti
Bhabua Ward No.1, District Kaimur at Bhabua.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner, Patna Division, Patna.
2. Collector, Bhabua at Kaimur.
3. Sub Divisional Officer, Mohania, Bhabua, Kaimur.
4. Deputy Collector, Incharge Confidential Section, Bhabua, Kaimur

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Sourendra Pandey, Advocate.
Mr. Rejesh Kumar Mishra

For the Respondents : Mr. (AAG10)

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 01-05-2015

The petitioner while serving in the Collectorate of Bhabua as Class III employee was proceeded against and was dismissed from service. A writ petition was filed by him vide CWJC No. 10756 of 1994 wherein by order dated 13.11.1997 the order inflicting punishment of dismissal was set aside and the matter was directed to be examined afresh by the disciplinary authority. In the light of the said order the disciplinary authority i.e. the District Magistrate, Kaimur, Bhabua again by order dated 20.4.1999 inflicted punishment of withholding of two increments with cumulative effect. The punishment being major was challenged by the petitioner before the appellate authority i.e. respondent –Divisional Commissioner, in terms of Rule 4 of Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 (for short ‘the Rules’) which gave rise to service appeal no. 121 of 1999. It has been asserted that after granting few adjournments the appeal was admitted on 3.4.2000. Several dates were fixed thereafter in the said appeal. The petitioner ultimately preferred to file written argument which was filed. However, the appeal was



taken up for consideration in the year 2004 and finding that no one represented the appeal the same was dismissed on 26.10.2004. No sooner the petitioner came to know about the dismissal of his appeal on the ground of non-prosecution, restoration petition for revival of the appeal was filed. The same was considered by the appellate authority and rejected by the order dated 12.6.2007, copy whereof has been enclosed as Annexure-8. The petitioner has impugned the aforesaid order before this Court.

I have heard the parties.

Counsel for the petitioner states that a counter affidavit has been served on him by the respondent nos. 2 and 3 wherein the facts stated in the writ application have been denied and it has been asserted that procedure as prescribed by law has been gone into. Filing of appeal is a substantive and valuable right of a delinquent employee. It appears that the appeal was preferred in the year 1999. It took more than six months for the appellate authority to admit the same although such appeal is statutory one and ought to have been considered and disposed of on merit. It appears from the records that the same remained pending consideration and disposal for nearly four years. The appeal was dismissed as no one represented the appellant on the date when the same was called out for hearing. It further appears that prior thereto the petitioner had already submitted his written argument/submission. Dismissal of the appeal on the ground that no one appeared to press the same, in my view, is not sustainable in law, particularly, when the petitioner had already submitted his written arguments. The revisional authority rejected the restoration application filed on behalf of the petitioner for revival of the appeal on the ground that no application for condonation of delay was filed. This Court is unable to appreciate the aforesaid reason spelt out in the order dated 12.6.2007. Rule 4 of the Rules

does not provide any period/time for filing of the appeal. It is not in dispute that a delinquent has a statutory right to file an appeal which requires consideration/adjudication on merit. If no time is prescribed for filing of an appeal, I am afraid, there cannot be any time prescribed for filing any such restoration application. The result is that petitioner has been denied a valuable right of consideration and disposal of his appeal on merit in accordance with law. In my view, the ends of justice shall be sub served if the appeal filed by the petitioner is restored on the file of the appellate authority i.e. the respondent no.1 for fresh consideration and disposal in accordance with law. The petitioner shall present a copy of the memo of appeal and the written argument before the respondent no.1 within a period of four weeks whereafter the respondent appellate authority will proceed to examine/consider and dispose of the same in accordance with law as quickly as possible preferably within three months of the presentation of the additional copy of the memo of appeal and written argument together with a copy of the present order.

The order present shall not be construed as prohibiting either the appellate authority or the revisional authority from giving a personal hearing to the petitioner. The writ application is disposed of with aforesaid observations/directions.

(Kishore Kumar Mandal, J)

Shyam/-

U			
---	--	--	--