

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.691 of 2016

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1. The State of Bihar through the Secretary, Animal and Fish Resources Department, Government of Bihar, Patna
 2. The Principal Secretary, Animal and Fish Resources Department, Government of Bihar, Patna
 3. The Director, Dairy Development Directorate, Patna
 4. The Joint Director-cum-Enquiry Officer, Dairy Development Directorate, Bihar, Patna
 5. The District Dairy Development Officer, Madhubani

.... Appellant/s

Versus

1. Sant Om Prakash, son of Late Sadho Prasad, resident of Village Bele Bakur, P.S. Islampur, District Nalanda
2. Shri Kranti Kumar, son of Sri Kameshwar Kamti, R/o Village Simra, P.S. Jhanjharpur, District Madhubani

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kinkar Kumar, SC-9
Mr. Zaki Haidar, AC to SC-9
For the Respondent/s : Mr. Rajeev Kr. Verma, Sr. Advocate
Mr. Sanjay Kr. No. 7, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 09-08-2016

State is in intra-court appeal against part of the judgment and order dated 10.03.2016, passed in C.W.J.C. No. 7245 of 2015 (Sant Om Prakash Vs. The State of Bihar and others).

We have heard learned counsel for the State and Sri Rajeev Kumar Verma, learned Senior Counsel appearing for the contesting respondent in this appeal who was the successful writ petitioner for the purposes of final disposal of this appeal at this stage itself.



It appears that the writ petition was filed for setting aside the order of dismissal dated 22.02.2014, passed by the Director, Dairy Development Directorate, Patna dismissing the writ petitioner from service pursuant to a departmental proceeding. Learned Single Judge having set aside the order of dismissal had directed reinstatement of the writ petitioner-respondent.

Allegedly, on 27.12.2011 the writ petitioner was caught red-handed accepting bribe of Rs. 4,000/- for which Vigilance Case No. 91/11 was registered and the writ petitioner was taken into custody. Having been in custody for more than 48 hours he was put under suspension and subsequently a departmental proceeding was initiated against him. The departmental proceeding culminated in order of dismissal, which was challenged in the writ petition directly. From the order of the learned Single Judge it appears that the learned Single Judge found that two letters, which were documentary evidence, were not supplied to the writ petitioner. The witnesses upon whose statement the writ petitioner was being proceeded were not examined and the enquiry report was not served upon him to enable him to file second show cause reply. Upon these findings the learned Single Judge set aside the disciplinary proceedings and rightly so in our view. But what followed we do not approve. The learned Single Judge directed reinstatement of the writ petitioner.



In our view, considering the nature of charge and the nature of defect in the proceedings, it would have been appropriate for the learned Single Judge to remand the matter for proper proceeding. While doing so as the writ petitioner was under suspension the suspension would have continued. We must see in the context of a dismissal order so passed as to what relief a person gets as a consequence of irregularity in the departmental proceeding. Merely because departmental proceedings are found vitiated, it does not follow, it has to be set aside and the delinquent officer directed to be reinstated. In the facts of the present case, we are of the opinion that it was a fit case in which the learned Single Judge ought to have remanded the matter for fresh consideration before the Disciplinary Authority. The two documents that were not supplied, we have seen. They were more inconsequential than consequential. However, in fairness, those documents, however, irrelevant it could have been, could be easily supplied. The witnesses, who proved the allegations, are required to be examined. But the fact remains that there was a FIR which the writ petitioner was aware which contained the allegations. It was for the writ petitioner to show that the allegations were wrong. However, this fact as also the fact of non-supply of enquiry report would at best vitiate the disciplinary proceedings but would not end at that. These are procedural irregularities. In our view, the appropriate

order would have been to direct the disciplinary authority to start the proceedings afresh from the stage of framing of charge supplying documents to the writ petitioner examining officers and then once again submission of enquiry report disclosing the enquiry report to the delinquent. We, thus, direct accordingly. As the matter is being remanded for fresh consideration, it would be deem, fit and proper to order that the writ petitioner, who was under suspension prior to the order of dismissal, would be put back to the same position i.e. he would continue to be under suspension subject to whatever order which may be ultimately passed by the disciplinary authority.

With these observations and directions this appeal stands disposed of.

Needless to say that as the matter was initiated in the year 2011 and the writ petitioner being under suspension the departmental authority should complete the disciplinary proceedings as early as possible preferably within six months from today.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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