

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.180 of 2014
Arising out of
Miscellaneous Jurisdiction Case No. 1587 of 2011**

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1. The State of Bihar through Mr. Ashok Varath, the Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
 2. Mr. S.P. Keshav, the Member, Board of Revenue, Bihar, Patna
 3. Mrs. Bandana Prayasi, the District Collector, Gaya, District - Gaya
 4. Mr. Rakesh Kumar, the Sub - Divisional Officer - Cum - Conducting Officer, Tekari, P.S. Tekari, District - Gaya
 5. Mr. Janardan Prasad, the Circle Officer - Cum - Presenting Officer, Bodh Gaya Block, P.S. Bodh Gaya, District - Gaya

.... Appellant/s

Versus

Dileep Kumar Sinha, Son of Late Jagdish Prasad Sinha, Resident of Mohalla - Mananpur Gaya, P.S. Civil Lines Gaya, District - Gaya

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigendra Kumar, AC to GA-11

For the Respondent/s : Mr. Sanjay Kumar @ Manu, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 29-04-2016

Heard learned counsel for the parties.

2. The present Letters Patent Appeal is preferred against the order passed by the learned single Bench on 01.05.2013 in MJC No. 1587 of 2011, whereby the order of punishment restored by the Member, Board of Revenue on 18.04.2013 was set aside and the matter was remitted back to pass an order for parity in punishment between the Circle Officer and the Circle Inspector.



3. The respondent no.1 (for short hereinafter referred to as the 'applicant') filed CWJC No. 2982 of 2010 against the order passed by the Member, Board of Revenue setting aside the order passed by the Commissioner, Magadh Division on 07.05.2009 and restoring the order passed by the Collector, Gaya on 25.07.2008. A perusal of the record shows that the applicant was working as a Revenue Karamchari. On account of dereliction of duty, he was placed under suspension on 07.12.2007 and charge sheeted. On 27.05.2008, punishment of dismissal from service was passed. Such order was set aside by the Commissioner, Magadh Division on 07.05.2009, but in an appeal filed by the State, the Member, Board of Revenue set aside the said order of the Commissioner. The applicant thereafter filed CWJC No. 2982 of 2010, which was allowed with a direction to the Principal Secretary, Revenue and Land Reforms to pass a reasoned and speaking order.

4. The basis of the said order was that the other officials i.e., Circle Officer and Circle Inspector have not been dealt with departmentally although they were equally responsible along with the applicant. It is thereafter the Member, Board of Revenue passed an order on 18.04.2013 finding that all the three colluded to corner valuable pieces of land in and around Bodh Gaya. Therefore, after returning such finding, the order of punishment imposed upon the applicant was reduced to that of compulsory retirement but that the Circle Officer was inflicted punishment of stoppage of five increments without cumulative effects and denial of promotion for five years whereas the Circle Inspector was punished with stoppage of two

annual increments with cumulative effect and debarred to be considered for promotion for a period of three years.

5. Such order has been set aside again in contempt proceedings initiated at the instance of the applicant with a further direction to the Member, Board of Revenue to pass an order for parity in punishment as applicant cannot be singled out for a punishment which deprived him of his employment.

6. We have heard learned counsel for the parties and find that in contempt jurisdiction, the learned single Bench has exceeded jurisdiction vested in him. In CWJC No. 2982 of 2010, the matter was remitted back to pass a fresh order. Once, fresh order has been passed on 18.04.2013, it was for the applicant to avail his legal rights to assail such order, but to set aside such order in a contempt proceeding is not tenable and that too for the reason that different punishment could not be awarded to three different officials.

7. In a recent judgment, the Hon'ble Supreme Court in ***Lucknow Kshetriya Gramin Bank v. Rajendra Singh, (2013) 12 SCC 372,*** has held that there cannot be different punishments to the co-delinquent if there is complete parity of charges, thus on different circumstances, different punishments can be awarded. It was observed as under:

15. As is clear from the above that the judicial review of the quantum of punishment is available with a very limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is

to be left to the disciplinary/appellate authority to take a decision afresh and it is not for the court to substitute its decision by prescribing the quantum of punishment.

16. In the present case, however, we find that the High Court has, on the one hand directed the appellate authority to take a decision and in the same breath, snatched the discretion by directing the appellate authority to pass a particular order of punishment. In normal course, such an order would clearly be unsustainable, having regard to the legal position outlined above. The peculiar feature, however, is that the High Court has done so proceeding on the presumption that these three respondents are equally and identically placed as the other three employees who had admitted the charges, though this parity is not spelled out in the impugned order. Whether this approach of the High Court is tenable, looking into the facts of this case, is the moot question.

17. If there is a complete parity in the two sets of cases, imposing different penalties would not be appropriate as inflicting of any/higher penalty in one case would be discriminatory and would amount to infraction of the doctrine of equality enshrined in Article 14 of the Constitution of India. That is the ratio of *Rajendra Yadav case* {(2013) 3 SCC 73: (2013) 1 (L&S) 476}, already taken note above. On the other hand, if there is some difference, different penalty can be meted out and what should be the quantum is to be left to the appellate authority. However, such a penalty should be commensurate with the gravity of misconduct and cannot be shockingly disproportionate. As per the ratio of *Obetee (P) Ltd. Case* {(2005) 8 SCC 46 : 2005 SCC (L&S) 1075} even if the nature of misconduct committed by the two sets of employees is same, the conduct of one set of employees accepting the guilt and pleading for lenient view would justify lesser punishment to them than the other employees who remained adopted the mode of denial, with the result

that charges stood proved ultimately in a full-fledged enquiry conducted against them. In that event, higher penalty can be imposed upon such delinquent employees. It would follow that choosing to take a chance to contest the charges such employees thereafter cannot fall back and say that the penalty in their cases cannot be more than the penalty which is imposed upon those employees who accepted the charges at the outset by tendering unconditional apology.

(Emphasis supplied).

18. This, according to us, would be the harmonious reading of *Obettee (P) Ltd.* {(2005) 8 SCC 46 : 2005 SCC (L&S) 1075} and *Rajendra Yadav* {(2013) 3 SCC 73: (2013) 1 (L&S) 476} cases.

19. The principles discussed above can be summed up and summarised as follows:

xxx xxx xxx

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the

charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.

20. It is made clear that such a comparison is permissible only when the other employee(s) who is given lighter punishment was a co-delinquent. Such a comparison is not permissible by citing the cases of other employees, as precedents, in altogether different departmental enquiries.

8. In view thereof, we find that in a contempt proceeding, the order of punishment could not have been set aside and that too on the ground of different punishments to the delinquent employees.

9. Consequently, we set aside the order passed by the learned single Bench in contempt proceeding on 01.05.2013. However, it shall be open to the applicant to avail such remedy as is available to him against the impugned order dated 18.04.2013 before an appropriate forum in accordance with law.

10. The Letters Patent Appeal is, accordingly, allowed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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