

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.279 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 12463 of 2007

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1. The State Of Bihar
 2. The Commissioner Cum Secretary, Department Of Water Resources, Government Of Bihar, Patna
 3. The Commissioner Cum Secretary, Department Of Minor Irrigation, Government Of Bihar, Patna
 4. The Joint Secretary, Department Of Minor Irrigation, Government Of Bihar, Patna
 5. The Deputy Secretary, Department Of Minor Irrigation, Government Of Bihar, Patna
 6. The Chief Engineer, Department Of Minor Irrigation, Government Of Bihar, Patna
 7. Executive Engineer, Minor Irrigation Division, Gaya
 8. Executive Engineer, Minor Irrigation, Flying Squad, Patna
 9. Under Secretary, Minor Irrigation, Government Of Bihar, Patna

.... Appellant/s

Versus

Sikander Roy Son Of Sri Manak Roy, Resident Of Village- Pothahi, P.S.- Punpun,
District- Patna

.... Respondent/s

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Appearance :

For the Appellants : Mr. P. K. Verma, AAG 5 with
Mr. Nand Kumar Singh, AC to AAG 5 and
Mr. Mankeshwar Tiwary, AC to AAG 5

For the Respondent : Mr. Banwari Sharma with
Mr. Sahja Nand Sharma and
Mr. Shiv Kumar, Advocates

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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: 22-07-2016

The order dated 11th October, 2012 passed by the learned
Single Bench is the subject matter of challenge in the present Letters
Patent Appeal. The learned Single Bench has found that the order of
punishment imposed is illegal and consequently set aside the same.



The applicant, respondent herein, was charge sheeted on two allegations. The first allegation was of non-accounting of Rs.2.25 lakhs and the second charge was that the applicant has not followed the rules and procedure while implementing the works inasmuch as the applicant has got the earth work done, though it could not be done after 15th of June and that the applicant has not prepared any Muster Roll. It was also alleged that lakhs have been paid on two dates in favour of a person whose identity is not known.

The Enquiry Officer, in his report dated 29th November, 2006 (Annexure-6), found that the first charge was not proved whereas the second charge was found to be proved. The applicant was found guilty on the second charge. On the basis of such enquiry report, the disciplinary authority passed an order on 7th May, 2003, *inter alia*, passing an order of recovery of Rs.2,22,500/- and stoppage of four increments and will not be given any field posting for five years. The said order was affirmed in appeal on 27th June, 2005. The applicant filed C.W.J.C. No. 12218 of 2004 before this Court challenging the order which was allowed on 21st December, 2006. In the said order, the disciplinary authority was directed to proceed in the matter afresh from the stage at which the disciplinary proceeding had become vitiated i.e. passing an order of punishment on the charge not proved by the Enquiry Officer without recording any disagreement



note. After the said decision, the disciplinary authority passed an order on 20th May, 2007 ordering recovery of Rs.14.56 lakhs and also that he shall not be paid over and above the subsistence allowance. It is the said order which was affirmed in appeal on 24th September, 2007. Still aggrieved, the applicant filed writ application which has been allowed by the learned Single Bench.

It is explained that Rs.14.56 lakhs consists of 50% of Rs. 24.60 lakhs, the advance withdrawn by the applicant. The applicant has been imposed punishment of recovery of half of the said amount and the remaining amount is Rs.2.25 lakhs, the amount which finds mention in charge no. 1.

Learned counsel for the appellants could not point out that there was any charge in respect of loss of Rs.24.60 lakhs. In absence of computation of loss in the charge sheet, the applicant could not have been burdened with the recovery of Rs.14.56 lakhs. We find that the disciplinary authority has committed grave illegality in imposing recovery of Rs.2.25 lakhs, though the charge no. 1 containing the loss of the said amount was found to be not proved. Even after the judgment of this Court no disagreement was recorded or communicated to the applicant. Therefore, the amount of Rs.2.25 lakhs is wholly illegal and unsustainable. Still further, there was no quantification of the amount of advance drawn by the applicant.

Though there are general allegations but the specific amount withdrawn by the applicant and that the said amount has not been accounted for was not the part of the allegation. If there is no allegation, how the disciplinary authority could take into consideration the facts which are not part of the charge sheet that could not be explained by the appellants.

Thus, we find that the disciplinary authority has proceeded on extraneous circumstances while imposing punishment. The appellate authority has mechanically affirmed the order of the disciplinary authority. Therefore, both the orders have been rightly set aside by the learned Single Bench.

Accordingly, Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/P.Kumar

AFR/NAFR	NAFR
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