

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.592 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 19833 of 2012**

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Krishna Chandra Jha, S/O Late Sheo Nandan Jha, Resident of -3 M.G. Road, Near Harrow Public School, P.S. Mithila University, District - Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar through the Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
2. The Additional Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
3. The Joint Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
4. The Deputy Secretary, Public Health and Engineering Department, Government of Bihar, Patna.
5. The Engineer-In-Chief, Public Health and Engineering Department, Government of Bihar, Patna.
6. The Departmental Inquiry Commissioner, General Administration Department, Government of Bihar, Patna.
7. The Accountant General, Birchand Patel Marg, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kripa Nand Jha, Advocate.

For the Respondent/s : Mr. Harishankar Roy, AC to PAG-1

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 01-09-2016

Heard learned counsel for the parties.

2. The present Letters Patent Appeal is directed against the order dated 20.01.2014 passed by the learned Single Bench by which CWJC No. 19833 of 2012, filed by the appellant, has been dismissed.

3. The appellant, while working as Junior Engineer in the Public Health Engineering Department, Government of Bihar, made



11 appointments on daily wages between the years 1983 to 1987. Thereafter, he was transferred from Sitamarhi to Darbhanga as Executive Engineer. He was subsequently promoted as Superintending Engineer on 22.05.1996 and superannuated from Purnea Circle on 31.01.1997. On 29.06.1998, memo of charge was issued to him under Rule 43(b) of the Bihar Pension Rules, 1950.

4. The allegation against the appellant was of making 11 appointments on daily wages contrary to the provisions of appointment. The appellant submitted his reply on 08.08.1998 justifying such appointments on the ground that they were made in exigency of work. Upon enquiry being conducted, a report was submitted on 12.08.1999. The Disciplinary Authority issued second show cause to the appellant on 02.04.2003, to which he filed reply on 28.04.2003. Pursuant thereto, order of punishment was issued on 09.05.2005 by which 10% pension and full gratuity were deducted permanently. The appellant challenged the order in CWJC No. 9043 of 2005, which was disposed off by order dated 14.07.2010 by which the order of punishment was quashed and the matter remitted back to the enquiry officer directing to conclude the enquiry within six months and order to be passed based on the finding of the enquiry officer within the next three months.

5. The enquiry officer, based on the earlier charges, issued



show cause to the appellant on 20.12.2010 directing him to file his reply. The appellant submitted his reply on 23.12.2010. The enquiry officer submitted report on 04.07.2011 holding the charge of making illegal appointment of daily wagers to be proved. Second show cause was issued on 05.08.2011 and the appellant submitted his reply to the same on 16.08.2011. After considering the reply of the appellant, by order dated 23.05.2012, 10% pension of the appellant has been permanently withheld. The appellant challenged the said order in CWJC No. 19833 of 2012 and dismissal of the same has given rise to the present Letters Patent Appeal.

6. Learned counsel for the appellant submitted that similar charges were levelled against a few of his colleagues, but they have either been exonerated or the Court has interfered in their order of punishment and, thus, the appellant should not be singled out for such punishment. For such contention, learned counsel has referred to the decision of the Hon'ble Supreme Court in the cases of ***Lucknow Kshetriya Gramin Bank v. Rajendra Singh*** reported as (2013) 12 SCC 372; ***Baleshwar Mishra v. Bihar State Food & Civil Supplies Corporation Ltd.*** reported as 2004 (2) PLJR 762 and ***Bir Bajrang Kumar vs. State of Bihar*** reported as 1986 PLJR 47 (SC).

7. Learned counsel for the State submitted that once in the enquiry, charges have been held to be proved, the punishment of



withholding 10% of pension is quite reasonable.

8. Having considered the rival contentions, we do not find any merit in the present Letters Patent Appeal. The charges against the appellant of appointing persons on work charge, contrary to the provisions of appointment, have not been disputed by him. His defence is that they were required in the exigency of work. A person holding a public post and discharging his official duty cannot go beyond the power vested in him. Even if there may have been justification, the same has to be taken care of in accordance with law with due sanction/permission of the competent authority. When the Government had not permitted such engagement, the appellant, being a Junior Engineer, was not competent to employ persons on daily wages. Moreover, the appellant taking a plea that similarly charged persons have either been let off by the authority or by the intervention of the courts, cannot be a ground, as there cannot be a plea of parity in punishment, especially when separate and distinct departmental proceeding and enquiry was conducted with regard to each person. The authorities initially having withheld 10% of pension as well as 10% of Gratuity permanently, which, later on, after remand, has resulted in only withholding of 10% pension permanently, is not a case which can come under the category of the punishment being shocking to the conscience of the Court requiring interference.



9. Further, the law is settled that quantum of punishment is the exclusive jurisdiction of the disciplinary/appellate authority to determine. Once charge has been proved and not denied, the Court, under judicial review, would not interfere with the discretion of the Disciplinary Authority to impose a particular punishment.

10. The Hon'ble Supreme Court, in the case of ***Lucknow Kshetriya Gramin Bank*** (supra), has held as under:

“14. Yet again, in *State of Meghalaya v. Mecken Singh N. Marak*, (2008) 7 SCC 580 : (2008) 2 SCC (L&S) 431, this Court reiterated the law by stating:

14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would



not suffice.

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.

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

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/ departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

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.

11. Thus, the aforesaid judgment, which has also been referred to and relied upon by the learned counsel for the appellant, in fact, does not support his contention.

12. Even in cases, where there is a joint departmental enquiry, quantum of punishment, depending upon many factors, can be different as has been held by the Hon'ble Supreme Court in the case of *Administrator, Union Territory of Dadra and Nagar Haveli v. Gumabhia M.Lad* reported as (2010) 5 SCC 775, which reads as under :

“15. In a matter of imposition of punishment where joint disciplinary enquiry is held against more than one delinquent, the same or similarity of charges is not decisive but many factors as noticed above may be vital in



decision making. A single distinguishing feature in the nature of duties or degree of responsibility may make a difference insofar as award of punishment is concerned. To avoid multiplicity of proceedings and overlapping adducing of evidence, a joint enquiry may be conducted against all the delinquent officers but imposition of different punishment on proved charges may not be impermissible if the responsibilities and duties of the co-delinquents differ or where distinguishing features exist. In such a case, there would not be any question of selective or invidious discrimination.

16. Does the present case make out discrimination in inflicting punishment? We do not think so. In the first place, the respondent and the two other delinquents may have been found guilty in connection with the same incident i.e., illegal grant of occupancy rights in respect of government land to five persons but the charges against the respondent and the other two delinquents cannot be said to be same or substantially similar.”

13. As far as the decision in the case of ***Bir Bajrang Kumar*** (supra), the same has no relevance in the present context, as it relates to a case where a matter involving identical point, had been admitted by the High Court, but another identical case was dismissed by the same Court and, thus, the Hon’ble Supreme Court had remanded the matter for being heard along with case which had been admitted by the High Court.

14. Similarly, in the case of ***Baleshwar Mishra*** (supra) , the facts are different inasmuch as departmental proceeding against



co-proceedee had been concluded but the same proceeded against the petitioner only, which was held to be discriminatory. In the present case, the proceeding as well as charges were separate and distinct.

15. We may indicate here from the materials on record i.e., the order in the case of two other persons, namely, Ashok Kumar Verma and Indra Narain Jha, who are alleged to have been charged with similar irregularity, exonerating them of the charges, clearly indicates that upon review, the authorities of the State found that the allegations were not found proved, while in the present case, as per the enquiry report, charges against the appellant have been proved. No other ground has been urged before us on behalf of the appellant.

16. In view of the aforesaid position, we do not find any error in the order passed by the learned Single Bench, which may warrant interference in the present Letters Patent Appeal, which is, accordingly, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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