

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 413 of 2016

IN

Civil Writ Jurisdiction Case No 12466 of 2014

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Lalita Singh, son of late Raj Govind Singh, Post – Dalsagar, PS – Buxar Industrial Area, District – Buxar (Bihar)

.... Appellant/s

Versus

- 1 The State of Bihar
- 2 Commissioner, Patna Division, Patna, Bihar
- 3 Raman Kumar, present District Magistrate, Buxar
- 4 Bipod Singh Gunjiyar, the then District Magistrate, Buxar
- 5 Subdivisional Officer, Dumraon, District – Buxar
- 6 Block Development Officer, PS – Nava Nagar, District - Buxar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Lalita Singh (In Person)

For the Respondent/s : Mr Sanjay Kumar, AC to GA5

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

&

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 11-03-2016

Delay in filing the appeal is condoned.

2 Heard the writ petitioner/appellant in person at length and also the learned counsel for the State and, with their consent, the appeal is being disposed of at this stage itself.

3 This is an intra-Court appeal from the judgment and order dated 18.09.2015 passed in CWJC No 12466 of 2014 as filed by the writ petitioner/appellant which was dismissed by the learned Single Judge after hearing the petitioner, in person. We have perused

the records and we find no reason to interfere with the order of the learned Single Judge.

4 The facts do not appear to be in dispute. While working as a Peon (Class IV employee) in the Buxar Collectorate, a departmental proceeding was initiated and the writ petitioner/appellant was dismissed from service by order of the District Magistrate-cum- Collector, Buxar dated 29.10.2001. He challenged the same by filing CWJC No 16197 of 2001 which writ petition was heard and disposed of on 20th of July, 2009. Even though the learned Single Judge noticed that the petitioner should have filed an appeal at the first instance against the order of dismissal, but, as the learned Single Judge found certain procedural defects, he set aside the order of dismissal and remanded the proceedings to the Collector – cum- District Magistrate, Buxar with a direction that writ petitioner/appellant would continue to be under suspension and would be paid only subsistence allowance. The Collector, Buxar was granted the authority to pass final orders in the disciplinary proceedings in accordance with law. Again, the Collector, Buxar passed the final order in the disciplinary proceedings dismissing the writ petitioner/appellant from service by order dated 24.09.2010. This time, the writ petitioner/appellant filed a Service Appeal being Service Appeal No 82 of 2011 before the Divisional Commissioner, Patna



who, by his order dated 01.04.2013, set aside the order of dismissal again for procedural infirmities in the disciplinary proceeding and remanded the matter to the District Magistrate –cum- Collector, Buxar for fresh decision after issuance of second show cause. Notwithstanding the matter having been remanded to the Collector – cum- District Magistrate, Buxar, the writ petitioner/appellant chose to file the present writ petition being CWJC No 12466 of 2014 which was registered in this High Court on 22.07.2014. It was not disclosed in the writ petition that on 17.07.2014 itself, the District Magistrate – cum- Collector, Buxar had again passed the final order in the disciplinary proceedings dismissing the writ petitioner/appellant. This fact came to be known when comprehensive counter affidavit was filed by the State in the writ proceedings but petitioner did not choose to challenge the order of the District Magistrate –cum- Collector, Buxar which was passed on 17.07.2014. It appears that the writ petitioner/appellant, notwithstanding this disclosure and notwithstanding challenge to the order of the Collector, chose to press his writ petition claiming that he had since retired and, accordingly, he has to be paid his entire back wages alongwith entire retiral dues. This writ petition once again was dismissed giving liberty to the writ petitioner/appellant to challenge the order of dismissal dated 17.07.2014, as passed by the Collector, before the Divisional

Commissioner in appeal and the writ petition was, accordingly, dismissed on 18.09.2015. It is against the aforesaid order of the learned Single Judge that this appeal has been filed.

5 From the Memo of the Appeal, we find that the writ petitioner/appellant has filed an appeal being Appeal No 569 of 2014 on 20.08.2014 before the Divisional Commissioner against the order of dismissal dated 17.07.2014. The said appeal is pending. The status of the writ petitioner/appellant, thus, is of a dismissed employee. He has further stated that he has since superannuated on 31.12.2014. This is a misnomer inasmuch as he stood dismissed on 17.07.2014 itself. His plea in this intra-Court Appeal is that in terms of Rule 43 (b) of the Bihar Pension Rules, 1950 (for brevity, *the Rules*), the proceedings should abate and he should be paid all his salaries and complete retiral dues as he has superannuated during pendency of departmental proceedings.

6 We have heard the writ petitioner/appellant in person with great patience. We are unable to agree to his submissions. Rule 43 (b) of the Rules would apply if a disciplinary proceeding was pending. On his own showing, the writ petitioner/appellant was dismissed on 17.07.2014. Thus, the disciplinary proceedings stood concluded. His date of superannuation was 31.12.2014 which is obviously after his dismissal.

Superannuation would be of no consequence. A dismissed employee is not entitled to any retiral dues. Mere filing of an appeal or pendency of an appeal against final order of dismissal does not mean that the disciplinary proceeding is pending or continuing, inasmuch as it is concluded by the order of dismissal. Thus, Rule 43 (b) of the Rules has absolutely no application.

7 It is then submitted by the writ petitioner/appellant that it is unconstitutional to start repeated proceedings for the same dereliction. We are not impressed. No proceeding was reinitiated for the same dereliction. The disciplinary proceeding, once initiated, has continued. The final order passed was being set aside for procedural infirmities and the matter was remanded to the disciplinary authority for reconsideration. There was no reinitiation of proceedings which had once culminated. Thus, for the same dereliction, the writ petitioner/appellant cannot be said to have been tried more than once.

8 We, thus, find no merit in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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