

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.181 of 2016
IN
Civil Writ Jurisdiction Case No. 9806 of 2009**

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Ashok Kumar, son of hri Jagnarayan Prasad, resident of village- Rampur, P.O.- Rampur (Murar), P.S.- Nawanagar, District- Buxar, Bihar.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Department of Health (Medical Education, Family Welfare and Indigenous Medicine), Government of Bihar, Patna.
2. The Principal Secretary, Department of Health (Medical Education, Family Welfare and Indigenous Medicine), Government of Bihar, New Secretariat, Patna.
3. The Additional Commissioner, Department of Health (Medical Education, Family Welfare and Indigenous Medicine), Government of Bihar, New Secretariat, Patna.
4. The Joint Secretary, Department of Health (Medical Education, Family Welfare and Indigenous Medicine), Government of Bihar, New Secretariat, Patna.
5. The Director (Indigenous Medicines), Directorate of Indigenous Medicines, Department of Health (Medical Education, Family Welfare and Indigenous Medicine), Government of Bihar, New Secretariat, Patna
6. Devendra Nath Sharma, Son of not known to the petitioner, presently posted as the Joint Secretary cum Director (Indigenous Medicines), Directorate of Indigenous Medicines, Department of Health (Medical Education, Family Welfare and Indigenous Medicine), Government of Bihar, New Secretariat, Patna.

.... Respondents

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Appearance:

For the Appellant : Mr. Vinay Krishna Tripathy, Advocate
For the Respondents : Mr. Mrigendra Kumar, AC to GA 4

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 05-12-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to
an order passed by the learned Single Bench on 25th of January, 2012



in CWJC No. 9806 of 2009 whereby the writ petition was dismissed.

3. Initially the writ petition was filed seeking to quash the order of suspension dated 25th of July, 2009 (Annexure-5) and the order of cancellation of deputation dated 24th of July, 2009 (Annexure-6). Annexure-6 cancelling the deputation of the appellant was stayed on 31st of August, 2009 by the learned Single Bench. But during the pendency of the writ application, the departmental proceeding was initiated and concluded. There was an order of stoppage dated 5th of May, 2010 of two increments with cumulative effect, and that such period can be extended for another year and that the appellant will not be entitled to any other allowances other than the subsistence allowance paid during the period of suspension. The appellant challenged the order of punishment by way of an Interlocutory Application. The challenge to the order of punishment remained unsuccessful when the following findings were recorded:-

“This Court has carefully perused the inquiry report and does not find any fatal procedural infirmity either in the process of inquiry or in the resultant order of punishment. The petitioner had no right to remain posted on the particular post much less against the deputed post. The disobedience of the order by the petitioner is thus apparent on the face of record as has been also conclusively held by the Inquiry Officer while holding him guilty for the charges framed against



him.

That being so, this Court does not find any infirmity in the order of punishment. In the result, this application is dismissed and the interim order passed on 31.08.2009 is also vacated”

4. Before this Court, learned counsel for the appellant vehemently argued that Charge No. 7 on which he was charge sheeted is that he has not complied with the order of cancellation of deputation. It is contended that such order was stayed by the Court and therefore, such cannot be a misconduct on the basis of which punishment could be imposed.

5. We have heard learned counsel for the parties and find that there is no procedural irregularity and infirmity in the disciplinary proceedings which may entitle the appellant to invoke the writ jurisdiction of this Court. It is well settled that the Court in exercise of its power of judicial review against the departmental proceeding examines the decision making process and not the decision itself. The Court will interfere where there is procedural irregularity and infirmity in the process of enquiry. Even if Charge No. 7 is ignored on account of stay granted by this Court in the present proceedings, the fact remains that there were six other charges. The charges include indiscipline, indecent and unbecoming behaviour towards his seniors. The punishment imposed was preceded with a departmental



proceeding in which the charges were proved. The order of punishment is thus cannot be said to be in violation of procedural requirements which may warrant interference in the writ jurisdiction of this Court.

6. Still further, the learned Single Bench has recorded a firm finding that there was no infirmity in the order imposing the punishment.

7. Considering the above, we do not find any error in the order of the learned Single Bench which may warrant interference in the Letters Patent Appeal, which is accordingly dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

Chandran/Ibrar

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