IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4509 of 2016

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Arvind Kumar Khan Son of Shri Phanibhushan Khan Resident of Village + P.O. + P.S. - Bangaon, District - Saharsa.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
3. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
4. The Assistant Inspector General of Registration (Headquarter), Government of Bihar, Patna.
5. The Assistant Inspector General of Registration, Patna Division.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate
		Mr. Vikas Kumar, Advocate
For the State	:	Mr. Harishankar Rai, AC to PAAG
For the BPSC	:	Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 09-05-2016

Heard learned counsel for the petitioner as well as learned counsel appearing for the State and BPSC.

1. The petitioner seeks quashing of notification contained in Memo No. 197, dated 05.02.2016, whereby punishment of compulsorily retirement has been imposed upon him under Bihar Government Service (Classification, Control & Appeal) Rules, 2005, read with Rule 14 (ix) with immediate effect.

2. The facts of the case, in short is that the petitioner was initially appointed as Sub-Registrar in Bihar Registration

Services in the Department of Registration, Excise, Prohibition, Govt. of Bihar, Patna. In the year 2013, the petitioner was posted as Sub-Registrar in Registry Office, Barh. On 20.03.2013, a gift deed was registered, assessing its value at Rs.14,21,000/-, on which stamp duty was paid. On 27.03.2013, one Mukesh Kumar Gupta made a complaint that the gift deed was registered for lessor valuation in order to provide unlawful gain to the Executor. On the said complaint, an inquiry was made, wherein it transpired that there was shortfall of stamp duty by a sum of Rs.35,844/-. Pursuant to the inquiry report, direction was issued to the petitioner to refer the matter under Section 47(A) of the Stamp Duty Act, to the Appellate Authority. It is alleged that the petitioner instead of referring the matter under Section 47(A), summoned the parties which made good the shortfall amount. As the petitioner did not refer the matter under Section 47(A) to the Appellate Authority, as directed, a departmental proceeding was initiated vide Memo No. 529, dated 31.01.2014, for the aforesaid charge.

3. The petitioner denies the allegations and submits that there was bonafide mistake with respect to calculation of stamp duty. On conclusion of the inquiry, the Inquiry Officer held the petitioner guilty of the charges. On receipt of the inquiry report, the Disciplinary Authority constituted Three Men Committee to look into the inquiry report and to make suggestion with regard to quantum of punishment. On examination of the matter, the Three Men Committee, suggested a minor punishment in the form of warning to the petitioner. However, the Disciplinary Authority, notwithstanding the suggestion of the Three Men Committee, proceeded to impose punishment of compulsorily retirement and sought concurrence from BPSC, which did not agree with the quantum of punishment as the same, according to it, was disproportionate to the offence committed by the petitioner. The Department was also of the view that a minor punishment should be awarded on the petitioner. However, the Disciplinary Authority vide order, dated 05.02.2016, for the reasons recorded therein, decided to award punishment of compulsorily retirement.

4. Learned counsel appearing for the petitioner submits that even as per the respondents, the total loss caused to the Department was Rs.28,675/-. The Three Men Committee constituted by the Government had also recommended for minor punishment. He next submits that the Registration Department, Govt. of Bihar, vide its letter no. 361, dated 16.02.2000, laid down a general guidelines that if there is deficit in seeking stamp duty or registration fee on account of bonafide mistake, then instead of making reference under Section 47A of the Indian Stamp Act, the Executor should be asked to make good the deficit amount.

5. Learned for the State has justified the impugned actions and submitted that the Inquiry Officer recorded its finding that the petitioner intentionally ignored deposit of Stamp Duty of Rs.35,844/-. It is further case of the State that as the petitioner did not refer the matter under Section 47(A), the department was not able to recover the amount of penalty from the Executor.

6. It is not in dispute that the petitioner enhanced the value of the gift deed to Rs.14,21,000/-. The allegation is that stamp duty was not properly calculated, which caused revenue loss to the State. The case of petitioner is that the error was bonafide, and the Inquiring Committee as well as the Department were of the view that a minor punishment should be imposed in the facts of the case.

7. In view of aforesaid circumstances, I set aside the order of punishment of compulsorily retirement of the petitioner and remit the matter to the disciplinary authority for fresh consideration on the issue of quantum of punishment.

8. In the result, the writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J.)

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