

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8483 of 2014

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Girish Kumar, son of Late Rajendra Prasad, resident of Vasudeo Vihar Apartment,
Flat No. 202, Nageshwar Colony, P.S. Budha Colony, District- Patna

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Transport,
Government of Bihar, Patna
2. The Principal Secretary, Department of Transport, Government of Bihar, Patna
3. The Principal Secretary-cum-State Transport Commissioner, Department of
Transport, Bihar, Patna
4. The Additional Transport Commissioner-cum-Conducting Officer, Department
of Transport, Bihar, Patna
5. The Under Secretary-cum-Presiding Officer, Department of Transport, Bihar,
Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Ashish Giri, Advocate

For the Respondent/s : Mr. Mahendra Prasad Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 02-05-2016

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

1. The petitioner was posted as Motor Vehicle Inspector
in the Transport Department, Government of Bihar, Patna. He
seeks quashing of the order bearing, Memo No. 1987, dated
31.03.2014, passed by the Principal Secretary, Transport
Department, whereby his service has been terminated. The
petitioner further seeks quashing of the Inquiry Report, dated
24.02.2014 and supplementary Inquiry Report, dated
12.09.2013, holding him guilty of the charge. In short, the
petitioner was departmentally proceeded for charge of

dereliction of duty and misconduct. The Inquiry Officer, on conclusion of the inquiry, recorded finding of guilt. Consequent thereof, the petitioner has been dismissed by the Principal Secretary, Transport Department, vide memo no. 1987, dated 31.03.2014.

2. Mr. Giri, learned Senior Counsel appearing for the petitioner, submits that inquiry proceeding has been conducted contrary to the well settled norms and rules laid down in Bihar CCA Rules, 2005. Neither any document was tendered by the Conducting Officer nor any witness was examined by the prosecution. In this view of the matter, learned counsel submits that the report of the Inquiry Officer is based on no legal documents.

3. He next submits that the Principal Secretary lacked jurisdiction to inflict punishment, as he was not his Appointing Authority. Learned counsel referring to his appointment letter, submits that the Appointing Authority of petitioner is Hon'ble Governor of Bihar and as such, it was not within the jurisdiction of the Principal Secretary to pass an order of punishment. Learned counsel submits that in similar circumstances, in the case of Sri Sunil Prakash Tiwary, this Court held that the order of punishment passed by the Principal Secretary, Transport Department, was held to be without jurisdiction, as he has been appointed by the order of Governor of Bihar. A copy of Division Bench's order, dated 01.07.2011, passed in case of Sunil

Prakash Tiwary Vrs. State of Bihar & Ors., bearing L.P.A. No. 585 of 2011, is annexed as Annexure-15 series at page 85 of the brief.

4. Learned counsel for the State is not able to controvert the submission of the petitioner that he could not have been removed by an Authority, who is subordinate to his Appointing Authority.

5. In the result, this writ application succeeds. The impugned order of punishment, passed by the Principal Secretary, Transport Department, being without jurisdiction, is accordingly set aside. The case is remitted to the Disciplinary Authority to consider the matter afresh on its own merit. As this Court has not examined the issue, whether the inquiry proceeding has been conducted in accordance with law, the petitioner would be entitled to take all these pleas before the Disciplinary Authority by way of filing supplementary show-cause, which would duly be considered, in accordance with law. As the order of punishment has been set aside, the petitioner would be reinstated in service.

With the aforesaid observation, the writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J)

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