

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12078 of 2008

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Moti Mishra

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh

For the Respondent/s : Mr. (Aag9)

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

6 08-02-2016 Heard learned counsel for the petitioner and the State.

There was a jail breaking on 11.3.2002 in the Sub Central Jail, Jamui on which date eleven prisoners managed to escape. The petitioner was posted as Jail Warden in the said jail. Charges were framed against the petitioner and an enquiry was held. The petitioner was dismissed from service. The petitioner challenged the entire proceedings, being vitiated in law, in writ jurisdiction being C.W.J.C. No.16444 of 2004.

2. Before the Writ Court, the petitioner took a stand that the charges were belatedly served upon him after the enquiry. He submits that he did not get any opportunity to examine any witness. In short, the submission of the petitioner was that the departmental proceeding was cryptic and he did not get sufficient opportunity to defend his case. This Court after hearing the parties, quashed the order of dismissal passed by the disciplinary



authority as well as Appellate Authority and remitted the matter to the superior authority to proceed afresh in the matter from the stage of submission of first show cause, hold proper enquiry himself or get it held, and thereafter, on conclusion of the same, pass appropriate orders in accordance with law afresh. The concluding portion of the order of this Court passed in C.W.J.C. No.16444 of 2004 is quoted herein below for easy reference:

“ In the circumstances, Annexures-6 and 7 are hereby quashed and the mater is remitted back to the disciplinary authority to proceed afresh in the matter from the stage of submission of first show cause by the petitioner, hold proper enquiry himself or get it held, and thereafter, on conclusion of the same, pass appropriate orders in accordance with law afresh. It goes without saying that the petitioner shall co-operate in the matter at all stages, in default of which the disciplinary authority shall be at liberty to proceed ex-parte against the petitioner and pass appropriate order”.

3. The petitioner submits that after the order of this Court, first show cause was served on 30.4.2008 which is stated as second show cause. The petitioner filed his reply to the same vide Annexure-12. Thereafter the impugned order dated 20.5.2008 was passed dismissing him from service.

A counter affidavit has been filed on behalf of the State. Learned counsel for the State controverts the submission of the petitioner and submits that the first show cause after the order of



this Court, was issued on 15.4.2008 and a reminder on 18.4.2008. The enquiry was concluded and the petitioner was given second show cause on 30.4.2008 to which he replied vide Annexure-12 on 17.5.2008. Thereafter, the order of punishment has been passed. He further submits that the petitioner has statutory remedy of appeal.

Counsel for the petitioner relying upon a decision of the Apex Court in the case of State of M.P. & Ors v. Sanjay Nagayachi & Ors, reported A.I.R. 2013 Supreme Court 1921 submits that alternative remedy of appeal would not be bar for moving this Court straightaway in writ jurisdiction, if there is violation of principle of natural justice. In support of the said contention, the petitioner further relied upon a decision in the case of Commissioner of Income-tax & Ors v. Chhabil Dass Agarwal, reported in (2014)1 SCC 603. The petitioner submits that even during the fresh enquiry, he has not been given appropriate opportunity to place his case or to examine his witness. It is further his contention that the Enquiry Officer had not considered any of his evidence.

In my view there is some dispute with respect to the facts between the parties. The respondents have denied that there has been any denial of principles of natural justice. I find it

appropriate to relegate the matter to the remedy of appeal before the Appellate Authority. As the petitioner was pursuing his remedy before this Court, the delay in filing of the appeal would be condoned. It goes without saying that the Appellate Authority would duly address the grounds that would be taken by the petitioner, issue wise. As it is an old matter and the petitioner has retired, the Appellate Authority would dispose of the appeal within a period of four months and may provide personal hearing to the petitioner.

With the aforesaid observations and directions, this writ application stands disposed of.

(Samarendra Pratap Singh, J)

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