

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No1596 of 2012

IN

Civil Writ Jurisdiction Case No 10040 of 2007

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Bal Krishna Gupta, son of late Nandan Sah, resident of At Present – Quarters No
303, Pushap Sri Indane, North Patel Nagar, PS – Shastri Nagar, District - Patna

.... Appellant/s

Versus

- 1 The State of Bihar
- 2 The Secretary, Minor Irrigation Department, Government of Bihar, Patna
- 3 The Joint Secretary, Minor Irrigation Department, Government of Bihar, Patna
- 4 The Deputy Secretary, Minor Irrigation Department, Government of Bihar,
Patna
- 5 The Accountant General, Bihar, Patna
- 6 The District Development Commissioner, Aurangabad

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Rajendra Prasad Singh, Sr Advocate with
M/s Navjot Yesu, Rishi Raj & Rakesh Raushan
Singh, Advocates

For the S t a t e : Mr Jai Shankar Barnwal, Advocate

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CORAM: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 29-01-2016

This intra-Court appeal has been filed by the appellant,
who was the writ petitioner, being aggrieved by the judgment and

order dated 25.04.2012 passed by the learned Single Judge in CWJC No 10040 of 2007.

Writ petitioner/appellant had unsuccessfully challenged the departmental proceedings which had concluded in forfeiture of pensionary benefits in terms of Rule 43(b) of the Bihar Pension Rules.

We have heard Shri Rajendra Prasad Singh, learned Senior counsel in support of the appeal and Shri Jai Shankar Barnwal, G.A.-5 for the State and, with their consent, are disposing of this appeal at this stage itself.

Shri Rajendra Prasad Singh, learned Senior counsel submits that even if, for the sake of argument, it be accepted that the writ petitioner/appellant, in spite of notice, had not appeared in the departmental proceedings, it does not absolve the authorities, conducting the inquiry, to establish by fact the charges levelled against the writ petitioner/appellant. Merely because a delinquent does not appear in the departmental proceedings, it cannot be assumed that he is guilty without proof of guilt. On the other hand, learned counsel for the State submits that if a delinquent chooses not to defend himself, it must be presumed that he is guilty and no further proof is required.

We have considered the matter and we cannot agree with the submission on behalf of the State, for it is well established that



charges are mere allegations and allegations cannot take the place of proof. The allegations have to be substantiated by facts proved in course of departmental proceedings, even if the delinquent chooses to remain absent. The primary facts establishing the allegations in support of the charge have to be proved by the department, the onus is on it. It is not absolved of this onus merely because the delinquent is absent. There is a difference between absence and admission. It is only in the case when the delinquent admits the allegation that admitted facts are not required to be proved, but, where there is no admission but only absence, then the Department has to prove before the inquiring officer, the facts leading and establishing the charge. Department is not absolved of that part of its responsibility. We have seen the inquiry report, which has been annexed with the counter affidavit filed to the writ proceedings as Annexure-A. It only says that charges having been leveled, the delinquent did not defend nor appeared and, as such, he is guilty. We regret that such cannot be the inquiry report. Inquiry officer is bound to inquire into the matter, look into the facts and give findings based upon the facts. In this case, this was clearly not done.

We, thus, have no option but to set aside the order of the disciplinary authority and the appellate authority and remit the matter back to the stage of service of charge on the writ petitioner/appellant

who now has full notice of the proceedings on the charge. State must immediately appoint a fresh inquiry officer and the parties would ensure that the inquiry is not lingered any further as the writ petitioner/appellant retired in the year 2004 i.e. 12 years back. The payment of retrial dues and other dues would abide by the result of the disciplinary proceedings. It is expected that the disciplinary proceeding, upon co-operation of both the parties, shall be concluded within 6 months from today.

With the aforesaid observation and direction, this appeal stands disposed of.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

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