

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.162 of 2012

In
Civil Writ Jurisdiction Case No. 17132 of 2007

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Dr. Chandra Bhushan			Petitioner/s
	Versus		
The State of Bihar & Ors			Respondent/s

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Appearance:

For the Petitioner/s : Mr. Ankit Katriar, Advocate
For the Respondent/s : Mr. Anshuman Singh, A.C. to PAAG-1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 07-09-2016

Heard Mr. Ankit Katriar learned counsel for the petitioner and Mr. Anshuman Singh, learned Assisting Counsel to PAAG-1 for the State.

This application has been filed praying for review of the order dated 22.12.2011 passed by a Bench presided over by Hon'ble Mr. Justice Mihir Kumar Jha (as his Lordship then was) in CWJC No. 17132 of 2997 (Dr. Chandra Bhushan vs. State of Bihar & ors.) whereby the writ petition was dismissed.

Mr. Katriar, learned counsel for the petitioner with reference to the order under review has submitted that the Bench has proceeded to dismiss the writ petition on the premise that the petitioner even while making a prayer for payment of the salary for the period of suspension has not chosen to question the punishment order. Mr. Katriar has referred to the relief prayed in the writ petition at paragraph-1 to submit that the entire departmental proceedings including the punishment order was put



to challenge by the petitioner and which prayer has not been considered by the Bench while passing the order of dismissal. Mr. Katriar while accepting the fault on the part of the counsel for the petitioner who was not present on the date of the dismissal of the writ petition submits that the order of dismissal being an error apparent on the face of the record, the prayer made in the review petition may be allowed.

Learned counsel for the State while opposing the prayer for review submits that since the order under review is an order on merits hence the appropriate remedy for the petitioner to question the same would be in appeal.

I have heard learned counsel for the parties and I have perused the records. The order of dismissal dated 22.12.2011 passed in CWJC No. 17132 of 2007 runs as follows:

“No one appears on behalf of the petitioner.

Counsel for the State is present and would submit that the prayer of the petitioner for payment of salary for the period of suspension seems to be wholly misconceived, inasmuch as, the order of punishment was passed against the petitioner after conducting departmental proceeding wherein apart from the other punishments of censor, stoppage of two increments, he was also inflicted punishment of withholding of salary for the period of suspension beyond subsistence allowance.

In view of the fact that the petitioner has not

assailed the aforementioned order of punishment dated 28.1.2005, this writ application must be held to be wholly misconceived.

This application is, accordingly, dismissed.”

Apparently, the Bench while considering the prayer made by the petitioner has concluded that since the punishment order was not put to challenge, the relief prayed by the petitioner cannot be allowed to him. A bare perusal of the relief prayed by the petitioner in paragraph-1 of the writ petition clearly shows that the petitioner while questioning the departmental proceedings in its entirety has also questioned the punishment order dated 28.1.2005 and thus the order under review apparently suffers from error apparent on the face of record.

In the circumstances discussed, the review application is allowed. The order dated 22.12.2011 passed in CWJC No. 17132 of 2007 is recalled and CWJC No. 17132 of 2007 is restored to its original file.

Let the writ petition be listed before the appropriate Bench as per roster accordingly.

(Jyoti Saran, J)

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