IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.407 of 2013
Arising out of
Letter Patent Appeal No.1703 of 2012
Arising out of
Civil Writ Jurisdiction Case No.9677 of 2006
Along with
Interlocutory Application No.3218 of 2014

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Brij Bihari Prasad, son of Late Beni Choudhary, resident of Village- Larui, P.O.- Kushumbhara, P.S.- Surajpura, District- Rohtas.

.... Petitioner

Versus

1. The State of Bihar.
2. Commissioner-Cum-Secretary, Department of Water Resources, Government of Bihar, Patna.
3. Chief Engineer, Department of Water Resources, Government of Bihar, Dehri-On-Sone.
4. Executive Engineer, Department Of Water Resources, Kaimur, Bhabhua.

.... Respondents

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Appearance :

For the Petitioner : Mr. S. K. Ranjan, Advocate

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
And
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 28-04-2016

Re.: Interlocutory Application No.3218 of 2014

The application is to seek condonation of delay of 3 months and 21 days in filing the present application.

For the reasons explained in the application, we find that sufficient cause has been shown by the applicant to seek condonation of delay of 3 months and 21 days in filing of the application. Consequently, the delay is condoned.

Interlocutory Application stands allowed accordingly.

Re.: Civil Review No.407 of 2013

The application is for review of the order passed by a Division Bench of this Court on 29th April, 2013 whereby the Letters Patent Appeal was decided on merits even when the counsel for the appellant was not present.

After hearing learned counsel for the applicant, we are satisfied that sufficient cause is made out for recall of the order and to restore Letters Patent Appeal No.1703 of 2012.

In view of the said fact, Civil Review No.407 of 2013 is allowed and Letters Patent Appeal No.1703 of 2012 is restored to its original file and number.

Re.: Letters Patent Appeal No.1703 of 2012

The challenge in the present appeal is to an order passed by the learned Single Bench of this Court on 29th of August, 2012 whereby the order of punishment consequent to disciplinary proceedings taken against the appellant remained unsuccessful.

The appellant was appointed as Tax Collector in the year 1984. In the year 2003, the appellant disappeared and stopped depositing the tax revenue in the Government account. Several notices were issued to him to report to the office since June, 2003, but the appellant continued to remain absent. Such facts are made out from Annexure-1, the complete order-sheet of the proceedings as conducted by the Deputy Collector (Revenue), Mohania.

Since the appellant was not responding and remained absent from duty, the departmental proceedings were initiated. He did not appear even after notices were published in the newspaper. The charges were framed, but again the appellant did not respond. The charges were absconding from duty, not rendering accounts and not returning government documents and papers. There were two separate criminal cases lodged against him for defalcation. He was arrested in one of them and absconded in the other. Since none appeared on behalf of the appellant, the enquiry officer conducted the enquiry and held the appellant guilty and thereafter, the Deputy Collector (Revenue) passed an order of punishment of dismissal from services for gross dereliction of duty. Before the order of punishment was passed, another show cause notice was given to the appellant and the copy of the enquiry report supplied.

The argument of learned counsel for the appellant is that the disciplinary proceedings have been conducted in the absence of the appellant and no effort was made to serve the appellant. It is also argued that on account of criminal case, he absconded and was not attending the criminal proceedings and the duties as well.

As per the facts on records, notices were issued on the residential address of the appellant. Even notice was published in the newspaper, but the appellant did not attend the duty, nor responded the notices. May be, to avoid the criminal processes, he abstained from duty, but that will not be a defence in the department proceedings when the appellant was admittedly not doing duty for years together.

While exercising the power of judicial review, this Court exercises limited jurisdiction to examine the decision making process whereby an order of punishment of dismissal from service was passed against the appellant. The conduct of the appellant is condemnable for continuously remaining absent from duty and, therefore, the challenge to the order of punishment of dismissal from service passed by the disciplinary authority is wholly untenable.

Learned counsel for the appellant lastly argued that the order of dismissal was passed on 30th of May, 2005 by the Deputy Collector (Revenue) whereas the Collectorate was wound up vide order dated 17th of May, 2005 (Annexure-2 to the writ application).

We do not find any merit in the said argument as well. Even after the Collectorate has been wound up, the appellant continues to be a Government servant. Thus, the action can be taken against him by the appointing authority. Winding up of a Collectorate relates to functioning of an office and does not deal with the relationship of employer and employee. The appellant was State Government employee and the Deputy Collector (Revenue) continued to be his appointing authority and thus, the order of punishment was passed by the competent authority in accordance with law. Still further, though the order came into force from the date of publication, but the duties of the officers were to continue till `1st of June, 2005 and thus, the order could very well be passed by the Deputy Collector (Revenue) on 30th of May, 2005.

In view thereof, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present intra court appeal.

The Letters Patent Appeal, thus, stands dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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