

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2305 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 3053 of 2014**

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Birendra Kumar Mahto, Son of Late Babuji Mahto, Resident of village and P.O. -
Khirhar Bazar, P.S. - Khirhar, District - Madhubani at present resident of Road No.
1, Sarvoday Nagar, Bailey Gola Road, P.O. Danapur, P.S. Rupaspur, District -
Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Labour Resources Department, Government of Bihar,
Patna.
4. The Labour Commissioner, Labour Resources Department, Government of
Bihar, Patna.
5. The Joint Secretary, the Labour Resources Department, Government of Bihar,
Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satish Chandra Mishra, Advocate

For the Respondent/s :

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 18-04-2017**

Seeking exception to an order dated 17.11.2016 passed by
the learned Writ Court in C.W.J.C. No. 3053 of 2014, this appeal has



been filed under Clause 10 of the Letters Patent.

2. Appellant was proceeded departmentally. A departmental inquiry was held against him under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and punishment of dismissal from service was imposed upon him. Challenging the punishment, the writ petition was filed and primarily two grounds were raised in the writ petition. The first ground was to the effect that a fresh inquiry was ordered by the State Government on 13.10.2008. This was a *de novo* inquiry after inquiry report was submitted in the first inquiry and, therefore, this *de novo* inquiry is not permissible. The second ground canvassed was that the penalty imposed is without disclosing any reason and it does not show application of mind. It was also said that the Review Application and the appeal have also not been properly considered. As far as the second ground is concerned, the learned Writ Court has remanded the matter back for reconsideration finding this ground to be substantiable. However, with regard to the first ground, the learned Writ Court found that the order for second inquiry was passed on 13.10.2008 and till filing of the writ petition, appellant did not raise any objection with regard to tenability of this inquiry. The learned Writ Court found that the appellant submitted to the jurisdiction of the second Inquiry Officer, participated in the second inquiry without



any objection and when the adverse order was passed he has raised this ground.

3. Even though learned counsel for the appellant placing reliance on a judgment of the Supreme Court in the case of **State of Orissa and others Vs. Brundaban Sharma and another-1995 Supp (3) SCC 249** tried to argue that when an order is a nullity, it is *non est* in the eye of law and should be ignored. He tried to contend that the procedure followed for conducting the second inquiry *de novo* was an illegal and the procedure a nullity and, therefore, it has to be ignored. The learned Writ Court did not accept this proposition and we also hold so. The appellant should have challenged the jurisdiction of the second inquiry when the second inquiry was ordered on 13.10.2008. Even if the appellant did not challenge this order by taking recourse to approaching any Court of law, the appellant could have raised this objection before the Inquiry Officer or the Disciplinary Authority. He did not do so and without raising any objection, participated in the inquiry and when an adverse finding was given, he challenged the same in the writ petition. Even before that when the second show-cause notice was issued before issuance of the punishment, this ground was never raised by him in these proceedings. That being so, the appellant having submitted to the jurisdiction of the second enquiry on various occasions and stages, we



see no reason to make any indulgence into the matter for the present.

The learned Writ Court in dismissing the writ petition on such consideration, has not committed any error warranting reconsideration.

4. The Letters Patent Appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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