IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1428 of 2016
In
Civil Writ Jurisdiction Case No.7642 of 2014

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1. The State of Bihar.
2. The Secretary, Rural Works Department, Bihar, Patna.
3. The Joint Secretary, Rural Works Department, Bihar, Patna.

... ... Appellant/s

Versus

Awadhesh Upadhyay, son of Late Durgesh Upadhyay, Resident of village - Bangapur, P.S. Parwalpur, District – Nalanda.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Ashutosh Ranjan Pandey, AAG -15
Mr. Vinay Kr. Mishra, AC to AAG-15

For the Respondent/s : Mr. P. N. Pathak, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-09-2017

Delay of 57 days in filing of this appeal is condoned.

Interlocutory Application No.5609 of 2016 stands allowed and disposed of.

Seeking exception to an order dated 05.04.2016 passed by the Writ Court in Civil Writ Jurisdiction Case No.7642 of 2014, this appeal has been filed under Clause 10 of the Letters Patent.

In a nutshell, the facts of the case are that the writ petitioner-respondent herein was working as an Assistant Engineer in the Rural Engineering Organization which was subsequently re-named as Rural Works Department. A Flying Squad headed by the

Superintending Engineer conducted an inspection on the area where the petitioner was working on 23.04.2011 and finding him to have committed various acts of commission and omission, a charge-sheet was issued to him, a departmental inquiry was conducted in accordance to the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') and an order was passed on 13.08.2012 imposing punishment of stoppage of three increments without cumulative effect for the period 2010-11.

Petitioner filed the writ petition in the year 2014 challenging this punishment imposing stoppage of three increments without cumulative effect. However, while the writ petition was pending, another show cause notice was issued to the petitioner and by another order passed on 10.04.2015 it was decided to recover 30% of the loss caused to the State Government amounting to Rs.43,20,409/- from the petitioner.

By filing an interlocutory Application bearing I.A. No.9526 of 2015, the petitioner challenged this order dated 10.04.2015 and came out with a case that this could not be done once for the same set of allegations, charge-sheet was issued and punishment of stoppage of three increments without cumulative effect was imposed, subsequent punishment order to recover 30% of the loss caused to the State Government to the tune of Rs.43,20,409/- is unsustainable after the original order of punishment of stoppage of three increments without cumulative effect for the year 2010-11 has already been implemented and the petitioner has suffered the said punishment. It was the case of the petitioner that the act of the respondents amounted to double jeopardy. In fact, it is an act of revision of the order of punishment originally imposed and this is not permissible and the learned Writ Court having quashed the subsequent punishment order dated 10.04.2015, i.e. for recovery of 30% of the loss caused to the State Government to the tune of Rs.43,20,409/- and the petitioner having given up the first punishment imposing stoppage of three increments without cumulative effect, the writ petition was allowed and challenging the said action, this appeal has been filed by the State Government under Clause 10 of the Letters Patent.

The contention advanced before us is that the punishment of stoppage of three increments without cumulative effect was an independent punishment and subsequent action for recovery of 30% of the loss caused to the State Government is also an independent action taken is permissible in law and the State Government is empowered to recover the amount pertaining to the loss caused. The principles of double jeopardy will not apply. It is not a case of review or revision of earlier case and the learned Writ Court has misconstrued the order and interfered with the subsequent order of punishment which is not permissible. Learned counsel argued that for the misconduct, an independent action has been taken and for the loss caused to the State Government, the Rule permits taking of independent action.

However, no such rule or regulation which permits taking of an independent action for recovery of the loss caused to the State Government is produced before us, on the contrary on perusal of the minor and major punishments as are prescribed under Rule 14 of the Rules we find that the minor penalties have been prescribed and the five minor penalties read as under:

<u>Minor Penalties:-</u>

(i) censure;

(ii) withholding of promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iv) reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect;

(v) withholding of increments of pay without cumulative effect.

From the aforesaid, it is clear that withholding of increments without cumulative effect is a punishment contemplated under Rule 14(5) and recovery from the pay whole or part of any pecuniary loss caused to the State Government on account of negligence or breach of orders is also a punishment under Clause 14(3). It is also an admitted position that for the same incident that arose due to the inspection or spot inspection conducted by the Flying Squad on 23.04.2011, both impugned actions have been taken against the writ petitioner. However, for the same incident and for the same set of allegations, two different proceedings have been held, one a departmental enquiry for imposing punishment contemplated under Rule 14(5) which was imposed and which was implemented in the case of the writ petitioner by recovery of the same and thereafter, an independent proceedings by issuing a show cause notice for punishment under Rule 14(3). The learned Writ Court took note of these factors and held that subsequent action for imposing a punishment of recovery of the loss caused to the State Government under Rule 14(3) amounts to double jeopardy as two different actions were taken for the same set of allegations with regard to the inspection and raid conducted by the Flying Squad on 23.04.2011 and in doing so, we are of the considered view that the learned Writ Court has not committed any error. It is a case for the same set of allegations out of the same act of commission and omission committed by the petitioner initially a departmental enquiry was conducted against him which culminated into imposing punishment of stoppage of three increments without cumulative effect. This was implemented and three increments were recovered and, thereafter, again for the same set of allegations, another punishment, now after three years, under Rule 14(3) of the Rules has been imposed, this, in law, is not permissible as it amounts to double jeopardy and we see no reason to make any indulgence into the matter and the learned Writ Court has correctly decided the issue after finding the principles of law laid down by the Hon'ble Supreme Court in the case of **O. K. Bhardwaj Versus Union of India, [(2001) 9 SCC 180].**

Accordingly, finding no error in the order of the learned Writ Court, the appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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CAV DATE	NA
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