

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1001 of 2011  
IN  
Civil Writ Jurisdiction Case No. 4062 of 2010**

- =====
1. The State of Bihar through Chief Secretary, Old Secretariat Building Patna
  2. The Principal Secretary, Personnel & Administrative Reforms Deptt., Govt. of Bihar, Patna
  3. The Joint Secretary, Personnel & Administrative Reforms Deptt., Govt. of Bihar, Patna
  4. The Deputy Secretary, Personnel & Administrative Reforms Deptt., Govt. of Bihar, Patna
  5. The Dy. Inspector General of Police, Magadh Range, Gaya
- .... .... Appellant/s

Versus

1. Ramji Prasad, S/O Late Sri Budhdeo Prasad, R/O House No. 78, Gandhi Path North, S.K. Puri (South Nehru Nagar) P.O.+ P.S.-Patliputra, Distt.-Patna
  2. The Accountant General, Bihar, Birchand Patel Path, Patna
- .... .... Respondent/s
- =====

**Appearance :**

For the Appellant/s : Mr. SANJAY KUMAR (AC-AAG10)

For the Respondent/s : Mr. Prabhakar Singh, Advocate

For Accountant General : Mrs. Namrata Mishra, 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: 07-09-2017**

This is an appeal filed by the State Government seeking exception to an order dated 24.09.2010 passed by the Writ Court in C.W.J.C. No. 4062 of 2010.

2. The respondent employee was working as a Section Officer in the office of D.I.G. Magadh Range, Gaya. On 25.06.2005, he was charge-sheeted and the allegation levelled against him was of making interpolation and permitting the candidates to appear second time in a physical test pertaining to selection to the



department in question. However, the writ petitioner was charge-sheeted and in the departmental proceeding the writ petitioner admitted the charges levelled against him and sought for dropping the allegation. As the entire selection process was cancelled. The departmental authority imposed a punishment and of revision to the lower post, it was modified to withhold 20% of the pension for a period of 10 years under Section 43(b) of the Pension Rules.

3. The learned Writ Court on the challenge made by the respondent employee evaluated the matter and found that once the writ petitioner has admitted the charges, the Court does not deem it necessary to deal with the various submissions made against the illegalities committed in the departmental enquiry, but at the same time interfered with the quantum of punishment by reducing it to reduction of pension by 5% for a period of one year.

4. The only question, which warrants consideration before us is as to whether in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution, can a Writ Court interfere with the quantum of punishment. In fact, on going through the order passed by the Writ Court, we find that the Writ Court has taken note of the legal position and held that only in exceptional circumstances the quantum of punishment can be interfered with, and thereafter, for the following reasons interfered with the punishment: (i) the entire



selection process has been cancelled, (ii) The person whom the writ petitioner tried to favour could not be selected, if selection has also been cancelled and the petitioner is now at the fag end of the service career, he has completed 33 years of unblemished service and therefore the punishment is too harsh.

5. In our considered view, if for these reasons, the learned Writ Court was of the opinion that the punishment should be re-considered, then the matter should have been remanded back to the competent authority for reconsideration. The question of exercise the jurisdiction under Article 226 of the Constitution and interfering with punishment has been considered by the Hon'ble Supreme Court in the case of **State Bank of India and others Vs. Ramesh Dinkar Punde** reported in (2006) 7 SCC 212 and the Hon'ble Supreme Court says that in exercise of the power of judicial review available under Article 226 of the Constitution, on the concept and theory of leniency, judicial review does not permit review of the quantum of punishment, after relying upon the various judgments of the Supreme Court rendered earlier on the issue in question, it has been held that the matter in such cases should be remanded back to the competent authority for reconsideration. Thereafter, in the case of **Uttar Pradesh Power Corporation Ltd. Vs. Virendra Lal (Dead) through LR**s reported in (2013) 10 SCC 39 similar principles have been reiterated



and it has been held that interference with the quantum of punishment should not normally be made. Finally, in case of **Central Manager (Operation), State Bank of India Vs. R. Periyasamy** reported in **(2015) 3 SCC 101**, the scope of judicial review with regard to quantum of punishment has been discussed and it has been held that the Writ Court should not normally interfere with the sufficiency or otherwise of the punishment imposed by the employer. It should be left to the employer to take a decision in the matter of imposition of punishment, interference can be made by judicial review only in the rarest of rare cases, where the punishment is so highly disproportionate or alarming that it clinches the conscience of the Court and it seem to be taken on arbitrary consideration. In the present case, no such exceptional circumstances are available on the basis of which the power of the interference with the quantum of punishment could be exercised.

6. In view of the above, we deem it appropriate to allow this appeal, quash the order passed by the Writ Court and remand the matter back to the authority, which has imposed the punishment for consideration of the question of reduction on pension by 20% for a period of 10 years. The authority shall consider the question of imposition of punishment afresh after taking note of the submission, past service of the petitioner and various other aspects.



7. The petitioner is granted liberty to make representation or file appeal to the authority for reduction of the quantum of punishment and after considering the same in accordance with law, a final decision with regard to reduction of punishment, shall be taken by the authority concerned within a period of 60 days. We are informed that the current and other benefits should not be interfered.

8. The Court proceed withholding of 20% or existing benefit of the petitioner shall be released to him forthwith within a period of 15 days.

**(Rajendra Menon, CJ)**

**(Anil Kumar Upadhyay, J)**

Uday/-

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