

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9622 of 2008

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1. Yashoda Devi wife of Late Devesh Chandra Dutta
2. Sanjay Kumar Dutta
3. Ranjit Kumar Dutta, both sons of Late Devesh Chandra Dutta
All residents of village- Khariyani, Via Pathargawa, P.S. Pathar Gawa,
District-Godda, State-Jharkhand

.... Petitioners

Versus

1. The State of Bihar
2. Principal Chief Conservator of Forest, Bishweshwaraiya Bhawan, Bailey Road,
Patna
3. Forest Conservator-cum- Regional Director, Balmiki Byadra Pariyojana. West
Champaran, Bettiah
4. Divisional Forest Officer-cum- Deputy Director, Byadh Yojana Champaran,
Region-I, Ram Nagar, Bettiah
5. Conducting Officer-cum- Conservator of Forest-cum- Regional Director,
Walmiki Brah Yojana, Champaran, Bettiah

.... Respondents

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Appearance :

For the Petitioner/s : Mr. S.K.TIWARY
Mr. Dr.Ajay Shankar Rajoo

For the Respondent/s : Mr. AC to AAG-11

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 13-04-2017

Heard Sri Shailendra Kumar Tiwary, learned counsel
for the petitioners and learned AC to Addl. Advocate General no.11.

2. The original petitioner had approached this Court
under Article-226 of the Constitution of India with a prayer to quash
an order dated 20.02.2006(Annexure-4A) passed by the Forest
Conservator-cum- Regional Director, West Champaran, Bettiah
(Respondent no.3), whereby in the departmental proceeding,
punishment order was passed to the extent that save and except



subsistence allowance, the original petitioner was not required to get anything. The petitioner has also assailed the appellate order dated 09.01.2008 passed by the Chief Conservator of Forest-cum- Chief Wildlife Warden, Bihar, Patna, contained in Annexure-5 to the writ petition, whereby the appeal preferred by the petitioner was rejected.

3. During pendency of the writ petition, the original petitioner left for heavenly abode and, as such, subsequently Interlocutory Applications vide I.A. No. 3280 of 2015 and I.A.No. 1092 of 2017 were filed for substituting legal heirs, which was allowed by order dated 21.02.2017 passed in I.A.No.1092 of 2017 and, thereafter, legal heirs of the deceased petitioner were substituted after expunging the name of original petitioner from the record.

4. Short fact of the case is that the petitioner was proceeded departmentally on four serious charges. Before initiating departmental proceeding, the petitioner was put under suspension on 19.11.2002. Thereafter, departmental proceeding was initiated against the petitioner and charges were served. However, since before conclusion of the departmental proceeding, the original petitioner was reaching the age of retirement and suspension order of the petitioner was revoked on 27.02.2004 and the petitioner was allowed to superannuate subsequently on 29.02.2004. During enquiry, the Enquiry Officer found three charges proved against the petitioner and



enquiry report was submitted. The petitioner was issued second show cause notice and finally by the order impugned i.e. the order contained in Order no.04 dated 20.02.2006 (Annexure-4 A to the writ petition), the disciplinary authority though exonerated the petitioner for three charges, regarding which there was recommendation of the Enquiry Officer giving benefit of doubt, the petitioner was exonerated for those charges. Paragraph-7 of the order of the disciplinary authority makes it clear that the original petitioner in respect of charge nos. (Ka), (Kha) and (Gha) was granted benefit of doubt. So far charge no.(Ga) is concerned, during enquiry the said charge was not found proved. Though, the petitioner was given benefit of doubt for the charges, which were proved against the petitioner, even then punishment order was passed to the extent that suspension order shall remain as it is and during the said period save and except subsistence allowance the original petitioner was held not entitled to receive any other relief for the suspension period.

5. Aggrieved with the order of the disciplinary authority, the petitioner preferred an appeal, which has been rejected vide Annexure-5 to the writ petition i.e. the order dated 09.01.2008.

6. Sri Shailendra Kumar Tiwary, learned counsel for the petitioner has argued that once the disciplinary authority after receipt of the report of the conducting officer exonerated the petitioner



regarding the proved charges by way of giving benefit of doubt, in that event there was no reason for the disciplinary authority to pass an order for withholding the salary during the suspension period. It was submitted by learned counsel for the petitioner that the petitioner remained suspended for several years i.e. from 19.11.2002 to 27.02.2004 and, as such, the punishment imposed was major punishment. He has argued that once the petitioner was allowed to superannuate after the suspension order was revoked, subsequently without passing any specific order under Rule 43(b) of the Bihar Pension Rules, the disciplinary authority was not at all authorized to further proceed against the petitioner. Once the petitioner was allowed to superannuate, it will be deemed that the relation between master and servant had come to an end. Of course, under Rule 43(b) of the Bihar Pension Rules, the Respondent/State was competent to proceed against the petitioner, but for the said purpose, appropriate order under Rule 43(b) of the Bihar Pension Rules was required to be passed. The petitioner superannuated in the year 2004 and punishment order was passed in the year 2006. It has also been argued that once a decision was taken to debar the petitioner from getting any salary save and except subsistence allowance, as per provision contained in Rule 97 of the Bihar Service Code, the petitioner was required to be noticed regarding proposed punishment. However, in the case, no



such order was passed. Learned counsel for the petitioner further submits that though the order of the disciplinary authority was completely illegal and erroneous, the said order was approved by the appellate authority on appeal filed by the petitioner without assigning any reason. He has specifically placed Annexure-5 to the writ petition to persuade the Court that the order of the appellate authority is a result of complete non-application of mind and it assigns no reason. On the aforesaid ground, a prayer has been made to set aside both the order i.e. Annexures 4A and 5 and direct the Respondents to pay all the consequential benefits, for which the petitioner was entitled during the period, he was put under suspension.

7. Learned AC to Addl. Advocate General no.11 has vehemently opposed the prayer of the petitioner. At the very outset, he has raised preliminary objection on the point of maintainability of the writ petition. He submits that against the order of the appellate authority (i.e. Annexure-5 to the writ petition), the petitioner was having statutory remedy under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, which prescribes revision against the order of the appellate authority. By way of referring to the facts disclosed in the counter affidavit, he submits that the writ petition is fit to be rejected.

8. Besides hearing learned counsel for the parties, I



have also perused the materials available on record. On perusal of the order of the disciplinary authority , it is evident that the petitioner was proceeded for four charges, which are as follows:

(Ka) Regarding financial irregularity

(Kha) For personal gain, he had misappropriated the government fund

(Ga) Interpolation in the record, and

(Gha) dereliction of duty.

9. It is true that the conducting officer in its enquiry had found charge nos. (Ka), (Kha) and (Gha) proved but charge no.(Ga) i.e. interpolation in the record was not proved. On the basis of the enquiry report, the disciplinary authority examined the matter in detail. In paragraph-7 of the order the disciplinary authority has categorically stated that the delinquent is given benefit of doubt so far charge nos. (Ka), (Kha) and (Gha) are concerned. Meaning thereby that the disciplinary authority one way or the other giving benefit of doubt exonerated the petitioner in respect of all the three charges proved by the Conducting Officer. Even then the order of punishment was passed and the petitioner was debarred to get anything save and except subsistence allowance during his suspension period. The Court is of the opinion that rightly or wrongly once the disciplinary authority exonerated the petitioner from proved charges by way of



giving benefit of doubt, there was no reason for passing any punishment order and, as such, on this score alone, the order of the disciplinary authority is liable to be set aside.

10. In view of facts and circumstances, primarily on the ground that since the petitioner was given benefit of doubt and exonerated from the proved charges, the order of punishment i.e. forfeiture of salary during the suspension period is not sustainable in the eye of law. Similarly, the order of the disciplinary authority in absence of any assigned reason is also required to be set aside.

11. Accordingly, both the orders i.e. order dated 20.02.2006 passed by the Forest Conservator-cum- Regional Director, West Champaran, Bettiah (Annexure-4A) and order dated 09.01.2008 passed by the Chief Conservator of Forest-cum- Chief Wildlife Warden, Bihar, Patna(Annexure-5) are hereby set aside. So far as the preliminary objection on the point of maintainability, which was raised by the State Counsel is concerned, in view of the fact that the writ petition was filed in the year 2008 itself, at this belated stage the availability alternative remedy may not be treated as bar to exercise writ jurisdiction

12. The writ petition is allowed. Both impugned orders are quashed. All consequential benefits must be given to the petitioner within a period of three months from the date of receipt/production of



a copy of this order.

(Rakesh Kumar, J)

NKS/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.04.2017
Transmission Date	

