

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.125 of 2016

IN

Civil Writ Jurisdiction Case No. 13262 of 2015

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Dr. Satyajit Nandquliar, Son of Shri Shiv Chandra Nandquliar, Resident of Mohalla - Road No. 11, Rajendra Nagar, Patna at Present- Posted in the office of Regional Deputy Director Health, Magadh Division, Gaya

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna
2. The Joint Secretary, Health Department, Govt. of Bihar, Patna
3. The District Magistrate, East Champaran, Motihari
4. The Regional Deputy Director, Health, Muzaffarpur
5. The Civil Surgeon, East Champaran, Motihari

.... Respondents

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Appearance :

For the Appellant/s : Mr. Rajendra Kumar, Sr. Advocate.

For the Respondent/s : Mr. Anil Kumar Verma, AC to AAG-9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 25-04-2017

Seeking exception to an order passed on 14.10.2015 by learned writ court in CWJC No. 13262 of 2015, whereby for an incident said to have taken place on 06.08.2007, after a departmental inquiry was conducted and after the petitioner was exonerated, in spite of no action being taken by the Disciplinary Authority, the learned writ court has taken up to itself the functions of the disciplinary authority and has directed for conducting a fresh inquiry into the matter.

It is in the backdrop of the aforesaid, we are required to decide this appeal.



Facts in nutshell go to show that the appellant was a doctor and was posted in the Health Department, when on 06.08.2007, the Inspector General (Prison) Bihar is said to have conducted inspection of the hospital, where the petitioner was working and finding the petitioner to be absent from the place of duty, a report was submitted by the Inspector General of Prison. Based on the report, the petitioner was immediately suspended in the year 2007 and an order in this regard was passed on 14.09.2007. However, the order of suspension was revoked after about 8 years on 06.10.2015 and in between, with regard to inspection report and the allegation of petitioner being absent from duty, a departmental inquiry was conducted and the Inquiry Officer submitted his report on 01.02.2010 exonerating the petitioner from all the allegations leveled in the inquiry. It is surprising that after the inquiry was concluded and when nothing was done, after the Inquiry report was submitted on 01.02.2010, and the petitioner continued to remain in suspension, the petitioner filed a writ petition before this court on 24.08.2015 and in that writ petition, the prayer made was that the suspension should be revoked and he should be permitted to join duty. when this writ petition was filed and when notice was issued to the department, the department immediately revoked the suspension on 06.10.2015 and thereafter when the matter came up for hearing before the learned writ court on 14.10.2015, the learned writ court after taking note of all



these factors, observed that once the Inquiry Officer had exonerated the petitioner of the charges leveled against him, there was no necessity for keeping him under suspension. Thereafter it was also observed that once the inquiry report was submitted on 10.09.2009 and when the charges were found not proved, writ court observed that it fails to understand as to how even after exoneration by the Inquiry Officer, the suspension continued. It is indicated by the writ court that the only option available to the government after receipt of the inquiry report exonerating the petitioner was either accept the report and drop the charges or differ with the inquiry report and issued show-cause notice. It is seen that after keeping the matter pending, the show-cause notice was issued on 19.08.2011 and after issuance of the show-cause on 19.08.2011; the petitioner continued to remain under suspension and finally on 06.10.2015 punishment of stoppage of three increments without cumulative effect was imposed upon the petitioner. The learned writ court found that the inquiry has not been properly conducted and as the inquiry has not been properly conducted again after quashing the inquiry and the punishment, liberty has been granted to the department to conduct a den ova inquiry and take action in the matter.

We are of the considered view that in the peculiar facts and circumstances of the case i.e.

(1) the petitioner having been suspended on 14.09.2007



and after he was exonerated of the departmental inquiry on 10.09.2009, the petitioner was kept under suspension for more than 7 years without taking any action and it was only after he filed the writ petition that the suspension was revoked on 06.10.2015.

(2) that after the inquiry officer exonerated the petitioner on 01.02.2010 nothing was done and the matter was kept pending and it was only on 19.08.2011, that a show cause notice was issued for differing from the finding of the inquiry officer and after issuing show-cause notice on 19.08.2011, the matter was again kept pending for a further period of five years up to 06.10.2015 and the punishment order based on the show-cause notice issued on 19.08.2011 was passed only after the writ petition was filed i.e. on 06.10.2015.

Accordingly, if these factors are taken note of, it is clear that the petitioner has suffered more than the punishment imposed upon him without any cause or reason, he has been kept under suspension right from the year 2007 up to 06.10.2015 and thereafter now after he was found to have been punished without following the due process of law, the learned writ court has directed to conduct the inquiry de novo afresh that also for an incident pertaining to the petitioner being absent from the place of duty on one day i.e. 06.08.2007. It is in the interest of justice that now at the fag end of his service having found the consequence of being under suspension the departmental inquiry right from the year 2007 up to year 2015, the



petitioner should be left free and no action should be permitted to be taken by the government. The government has slept over the matter for a long long period of time and merely because the government has now woken up that also at the instance of this court, the petitioner should not suffer and be subjected to further inquiry into the matter for a petty incident of absence from duty on one day.

Accordingly, we allow this appeal, quash the order passed by the learned writ court and direct that no further proceeding shall be taken against the appellant with regard to absence on 06.08.2007, he is exonerated of all the allegations leveled against him in this regard and all the consequential benefits should now be paid to him within a period of three months, deeming that no departmental action or any suspension was issued to him. The respondents are directed to grant all consequential benefits to the petitioner on such consideration within a period of two months.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Amit/-

AFR/NAFR	NAFR
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