

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.720 of 2014

IN

Civil Writ Jurisdiction Case No. 11598 of 2012

- =====
1. The State of Bihar, Patna
 2. The Principal Secretary, Transport Department, Government of Bihar, Patna
 3. The State Transport Commissioner, Bihar, Patna
 4. The Joint Transport, Commissioner-1, Transport Department, Bihar, Patna
 5. The Secretary, Regional Transport Authority, Patna
 6. The District Transport Officer, Bhojpur, Ara

.... Appellants

Versus

Mozaffar Hassan Son of Late Abdul Latif Resident of Sangi Masjid Near Kabristan,
Khara Khan, P.S. Phulwarisharif, District- Patna

.... Respondent

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Appearance :

For the Appellants : Mr. Lalit Kishore, PAAG-1
Mr. Ranjeet Kumar, AC to PAAG-1
For the Respondent : Mr. Ashok Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 22-03-2017

Heard learned Principal Additional Advocate General-1 on
behalf of the appellants and learned counsel representing the private
respondent.

2. The order dated 29.10.2013 passed in C.W.J.C. No.
11598 of 2012 is the subject matter of appeal before this Court. The
learned single Judge, after having given a considered opinion to the
submissions and materials available, decided to quash Annexure-13 of the
writ application dated 31.01.2012 by virtue of which the two punishments
imposed upon the private respondent of withholding 100% pension and
non-payment of salary for the period of suspension has been set aside. It is
this reason that the State is aggrieved.



3. The facts are not a matter of dispute that the private respondent was arrested by a vigilance team for demanding a bribe of Rs.2,000/-. It is alleged that he was caught red handed with the money for which a Vigilance Case No. 11 of 2008 was instituted. The delinquent was arrested and later enlarged on bail, but the authorities decided to also hold a departmental proceeding against him and on conclusion of the departmental proceeding the order of punishment came to visit him.

4. The private respondent filed the writ application challenging the punishment order primarily on the ground that the so-called finding of guilt by the enquiry officer is not based on any kind of evidence. In fact, no proper enquiry as such was held. No evidence in the departmental enquiry was produced and only on the basis of the First Information Report and the allegation made in the First Information Report he was declared guilty and his pension was withheld 100%,

5. So far as this aspect of the matter is concerned, to be doubly sure, the Court called for the original record relating to the departmental proceeding. After going through the records, this Court has no hesitation in recording that the departmental proceeding was not conducted in the manner prescribed and laid down in the Bihar CCA Rules, 2005 as amended up to date and only a hatchet job was done by the enquiry officer, based on which the order of punishment of withholding 100% pension was passed.

6. An effort was made on behalf of the learned Principal Additional Advocate General-1 representing the State that the accused had



accepted the fact that somebody has put Rs.2,000/- in his pocket and that amounts to acceptance of his guilt that was enough to punish him or hold him guilty. With due respect to the learned Principal Additional Advocate General-1, he is trying to turn the law on its head. The prosecutor has to first establish the guilt and it is not that the onus can be shifted upon the delinquent merely because he made a statement that Rs.2,000.00 was put forcefully in his pocket.

7. The records did not show that any kind of evidence as such was produced on behalf of the presenting officer or that evidences have been discussed in the order of the enquiry officer. Merely because the enquiry officer jumps to the conclusion without the necessary material being in place, nobody can be declared to be guilty. Learned single Judge, therefore, has rightly interfered with the impugned order of punishment of withholding 100% pension.

8. However, the Court is in agreement with the learned Principal Additional Advocate General-1 that quashing of the order of punishment should not come in the way of the State withholding 10% of the pension and 100% of the gratuity in terms of Rule 43(c) of the Bihar Pension Rules. Such a submission of the State seems to be valid in view of Division Bench judgment of this Court in the case of **Vijay Kumar Mishra vs. The State of Bihar and Others**, since reported in 2017(1) PLJR 575. Therefore, that part of the order of the learned single Judge that 100% pension or gratuity is required to be released in favour of the private respondent is required to be set aside or modified.



9. The other punishment was withholding of salary for the period of suspension. Here also the State authorities have erred by imposing such a punishment because way back a Division Bench of this Court, in the case of *Dinesh Prasad Vs. The State of Bihar and Others*, since reported in 2006 (4) PLJR 514, has already held that if such a punishment is required to be given then the procedure laid down under Rule 97(3) of the Bihar Service Code has to be followed. There has to be a show cause and opportunity and thereafter an order. Since none of these procedures were followed, the learned single Judge has quashed that part of the order of punishment as well, which in the opinion of this Court is supported by law laid down by the High Court.

10. In view of the above, with the modification as indicated in the earlier part of the order, the appeal is dismissed

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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