IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2977 of 2011

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Ashok Kumar Maurya S/O Late Nathuni Prasad Resident Of Village - Akauna, P.O. Sherghati, P.S. Amas, District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise & Prohibition (Registration) Department, Government Of Bihar, New Secretariat, Patna
2. The Inspector General Registration Department, Government Of Bihar, Patna
3. The Joint Secretary, Excise & Prohibition (Registration) Department, Government Of Bihar, New Secretariat, Patna
4. The District Magistrate Cum District Registrar Saharsa, District - Saharsa
5. The Accountant General Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Griyaghey, Adv
For the Accountant General	:	Mr. Anjani Kumar Sharan, ASG

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 10-08-2017

The petitioner, who at the relevant time was posted as Sub-Registrar in the Registry Office, Saharsa has filed this writ petition challenging the order dated 21.05.2010 passed by the Joint Registrar, Department of Registration, imposing punishment of withholding of two increments without cumulative effect on the petitioner.

It is seen from the records that while discharging his duties as Sub-Registrar in the Office in question, on 14.08.2007, one Ganga Sagar Prasad, an executant of the document produced a deed for registration and in the deed, the property in question was shown to be 67.685 decimals of land situated at Mauza Sulindabad, Pargana, North Khand Thana, Circle Kahara Tauzi No. 3650, Thana No. 197, which is situated outside the municipal area. The document was registered by the petitioner in accordance to the requirement of law but immediately after registration, the petitioner received a complaint from one Badari Prasad to say that in the document presented for registration, the property in the deed is shown to be situated outside the municipal area, whereas the property is situated within the municipal area, and, therefore, in calculation of duty, an error has occurred. The petitioner, immediately, on receipt of the same made a communication to the Circle Officer on 26.11.2007 and after receiving confirmation from the Circle Office, issued notice to all concern and recovered the deficit stamp duty of Rs. 79,520/- after following the due process as contemplated under the Indian Stamp Act. However, on account of the fact that petitioner has registered the document without conducting proper verification, the impugned action was taken against the petitioner under Rule 14 of the Bihar Government Servant(C.C.A) Rule, 2005 and by the impugned action the punishment in question has been imposed.

Learned counsel for the petitioner invites my attention to the enquiry conducted. The evidence of the Enquiry Officer as contained in Annexure-8 series dated 13th October, 2009 and the findings recorded by the Enquiry Officer in the aforesaid report which goes to show that it was the executant of the document Ganga Sagar Prasad who was responsible for the act. The petitioner has taken action immediately and there is no loss to the government exchequer.

Inter alia contending that without taking note of the aforesaid findings recorded by the Enquiry Officer, the impugned action taken, is a perverse action and, therefore, liable to be quashed.

The respondents have filed detailed counter affidavit and contended that, at the time of presentation of the documents itself, the petitioner should have verified all these factors and as the petitioner, without verification registered the documents, the acts of the petitioner is, thus, amount to a misconduct and in taking action against the petitioner, no error has been committed by the Department.

Having heard learned counsel for the parties and on perusal of the records, it is seen that the enquiry report dated 13.10.2009, Annexure-8 series, submitted by the Enquiry Officer holds that for the alleged act, the executant of the documents has deliberately shown the property to be situated within the limits of the municipal Corporation and thereby, it is he who is responsible for the misstatement. However, while imposing the punishment, the

Disciplinary Authority has not taken note of the aforesaid aspect of the matter. Even if, it is assumed that while registering the documents the petitioner did not take adequate care to verify the location of the property in question, the fact that has come on record goes to show that immediately after it was brought to the notice of the petitioner that the property is situated within the municipal limit, he took steps as provided under the Indian Stamp Act and the deficit of stamp duties which was the loss caused to the revenue was recovered by him on 14.08.2007 itself and the amount of Rs. 79,520/- was deposited by him in the Government Treasury.

That being so, even if the entire facts as has come on records are admitted, it would, at best amount to a case of negligence in the performance of duty by the petitioner, in as much as he, in a negligent manner, registered the documents without conducting proper verification of the area where the property was situated but on being appraised of the error committed by him, he immediately rectified the same. Apart from the aforesaid solitary incidence of negligence on the part of the petitioner, no other incidence on the part of the petitioner alike the one alleged in the Departmental Proceedings are made against the petitioner. In the case of **Union of India versus J. Ahmad 1979(2) SCC 286,** the meaning of the word ‘misconduct’ has been discussed by the Supreme Court and after analyzing the word ‘misconduct’, it has been held that an error or an isolated incidence of negligence in performance of duty without any mala fide intention is not a misconduct and for the said, Departmental Proceedings can not be held and punishment imposed. In 2006, the said principles have been reiterated by the Supreme Court in the case of Inspector Prem Chand Vs Govt. of NCT, Delhi, 2007(4) SCC 566 and it has been held that misconduct is a conduct unbecoming of a Government Employee when he consistently commits acts of commission and omission contrary to laid down principles and norms and it has been emphasized by the Supreme Court after placing reliance on the Judgment of the Supreme Court in the case of J.Ahmad(supra) that isolated incidence or acts of negligence cannot be termed as misconduct, for which employee can be punished. If the aforesaid principle is applied in the present case, it would be seen that the petitioner committed an error or an act of negligence in registering the documents without verifying the actual location of the property in question but immediately when it was brought to his notice that an error has been committed, he rectified the same, took action for recovery of the loss caused to the Government Exchequer.

That being so, in my considered view, it is not a case of misconduct or deliberate act of commission and omission on the part of the petitioner, for which he should have been punished. There is nothing on record to indicate that petitioner is habitual in committing such act on the contrary it is only an isolated act of negligence in dealing with the matter, for which he has been punished. If the legal principles as discussed hereinabove, are applied in the facts and circumstances of the case, I am of the considered view that the act cannot be termed as misconduct for which the applicant may be punished.

Accordingly, the writ application stands allowed.

(Rajendra Menon, CJ)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22/08/2017
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