

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1537 of 2013
IN
Civil Writ Jurisdiction Case No. 5651 of 2006**

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1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna
2. Secretary-Cum-Commissioner, Animal Husbandry Department, Government Of Bihar, Vikash Bhawan, New Secretariat, Patna
3. Joint Secretary, Animal Husbandry and Fisheries Department, Government Of Bihar, Vikash Bhawan, New Secretariat, Patna
4. Director, Animal Husbandry Department, Government of Bihar, Vikash Bhawan, New Secretariat, Patna
5. The Regional Director, Animal Husbandry Department, Government Of Bihar, Saran Range, Chapra

.... Appellant/s

Versus

1. Om Prakash Singh S/O Sri Bhikhi Manjhi Resident Of Village- Pakri, P.O.- Jigna Math, P.S.- Barharia, District- Siwan At Present Posted As Assistant Director (Statistics), Office Of The Regional Director, Animal Husbandry Department, Saran Range, Chapra

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Mandal, SC 3
Mr Arjun Prasad, AC to SC 3
Mr Bipin Kumar, AC to SC 3
Mrs Neelam Kumar, AC to SC 3

For the Respondent/s : None

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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: 02-03-2017

Only in the interest of justice and to test the bona fide of the State, the delay of 202 days in filing of the appeal under Letters Patent is condoned. I.A. No.8461 of 2013 is allowed and the appeal is



taken up on merits.

2. In the writ application filed by Sri Om Prakash Singh, who happens to be the respondent in the present appeal, an order of punishment as an outcome of a departmental proceeding was challenged. The punishment after enquiry was stoppage of two increments with cumulative effect. The allegation against the private respondent, who happened to be the Assistant Director (Statistics) in the Department of Animal Husbandry, was that he had recommended 90 names for appointment on Class IV posts when only 68 vacancies were available. The private respondent was a member of the Selection Committee and because of such a recommendation, appointment of all the recommended candidates was made which had a fall out on the State exchequer.

3. A departmental enquiry was initiated. The enquiry officer did not hold the delinquent guilty. The Director, Animal Husbandry, therefore, decided to order a de novo enquiry and based on the de novo enquiry, punishment of guilt was pronounced and two increments were ordered to be withheld with cumulative effect. Such decision became matter of challenge in the writ application. The learned Single Judge after having given a detailed hearing to the parties has recorded in his order that there was a basic legal infirmity in ordering a de novo enquiry, which cannot be done as a matter of



course merely because the first enquiry officer did not find the delinquent to be guilty. The other aspects, which has been taken note is that even in the second enquiry nothing tangible in terms of evidence and material was produced to bring home the charges and, therefore, the second enquiry and the manner in which the enquiry was held cannot stand the scrutiny of law.

4. The other significant aspect which the learned Single Judge has noted is that the private respondent was one of the members of the Selection Committee and it is not unusual for a Selection Committee to make recommendation of some more names than the actual vacancies. It was for the appointing authority to verify the actual vacancy position and offer appointment and even if for the sake of argument, by oversight such appointment came to be made then remedial measures could have been taken and not as a knee jerk reaction to hold a wishy-washy kind of enquiry against the private respondent to pass the buck.

5. Since the process and procedure followed by the authorities in declaring the private respondent to be guilty and then imposing punishment of withholding two increments with cumulative effect cannot be said to be inconsonance with the process and procedure established by law, the learned Single Judge rightly quashed the order of punishment and allowed the writ application.



The State is now aggrieved by such a decision and has filed the present appeal.

6. Submission of the counsel for the appellant is that the punishment has come to visit the private respondent after due enquiry. It was incumbent upon him as a member of the Selection Committee to recommend only as number of names as vacancies and he cannot shirk the responsibility thrust upon him.

7. Such submissions are submissions for the sake of submission because the legal infirmities which have been noticed and talked about by the learned Single Judge in his order, which is under challenge, is not met by such submissions. The responsibility on the private respondent which is sought to be saddled is much broader and larger, than is expected as a member of the Selection Committee. He was not the lone voice in such recommendation. The recommendation was a mere recommendation. The appointing authority also had responsibilities. In addition to that, if the law and the procedure was not followed for holding de novo enquiry, there was no option left with the learned Single Judge but to quash the order of punishment, which was imposed after playing out a farce of an enquiry, for reaching the conclusion of guilt.

8. The order of the learned Single Judge does not suffer from any vice, which is required to be interfered with. Appeal has no



merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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