

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5150 of 2011

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Narendra Pratap Shahi, S/O Suresh Shahi, R/O Vilalge Dhadha Bujurga, P.S. Tara,
District Kushi Nagar (U.P.) At Present R/O Mohalla Gandak Colony, P.S. Bagha-1,
District West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District and Sessions Judge Cum Administrative Officer, West Champaran.
3. The Sub Divisional Judicial Magistrate cum Inquiry Officer, Bettiah.
4. Sri Ramesh Chandra Malviya, Judicial Magistrate, 1st Class cum Departmental Examination Controller, Bettiah.
5. Sri Sanjay Kumar Singh, Judicial Magistrate, 1st Class cum Invigilator, Departmental Examination, Bettiah.
6. Sri Niraj Bihari Lal, Judicial Magistrate 1st Class cum Invigilator, Departmental Examination, Bettiah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar, Advocate
For the Respondent/s : None

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 19-08-2017

Petitioner, who was working as a Driver in the Civil Court, Bettiah, has filed this writ petition challenging the order dated 02.11.2010 communicated to the petitioner by the District & Sessions Judge, West Champaran, Bettiah, and the appellate order whereby punishment of stoppage of one increment and confirmation of the period of suspension has been imposed upon the petitioner.

It is alleged against the petitioner that while participating in a departmental examination for promotion on the post of Clerk, which was conducted on 13.05.2007 in Civil Court, West Champaran, Bettiah, the Supervisor got the petitioner using a mobile phone and a departmental



enquiry was conducted and punishment in question has been imposed upon the petitioner.

Inter alia contending that the petitioner had only kept the mobile phone with him, he was not using the mobile phone for extraneous purpose and had only kept it with him and it rang when he went to deposit the answer book, it is stated that the impugned action is not sustainable.

Learned counsel for the petitioner argues that when the petitioner was not using the mobile phone and there was no evidence to show that the petitioner had used the mobile phone for facilitating him in appearing in the examination, the impugned action is unsustainable.

On the contrary, from the statement and the evidence that has come on record, it is clear that P.W.2 Neeraj Behari Lal, Judicial Magistrate, 1st Class, who has deposed in the departmental enquiry, has stated that he was Invigilator in the examination in question. It is stated that at 1.30 P.M. just when the examination was in progress, the mobile phone of the petitioner rang and when it was searched it was found that he had mobile phone concealing in the handkerchief and was carrying with him in the examination hall which was not permissible. It is on the aforesaid evidence and the other evidence that came on record, the impugned action has been taken.

Merely because the petitioner did not use the mobile phone



as alleged by him as an unfair means in the examination or that there was no material to show that the mobile phone was used by the petitioner to facilitate in the conduct of the examination, the fact remains that the petitioner was employee in the establishment of the Court, there was total prohibition in carrying the mobile phone inside the examination hall and the evidence of the Judicial Magistrate, the Invigilator, and the other evidence of the witnesses that have come on record goes to show that the petitioner's mobile phone had rung in the examination hall, it was seized which was kept concealed in his handkerchief. If taking note of all these factors, the impugned action has been taken; I see no reason to make any indulgence into the matter. The writ petition stands dismissed.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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