IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1176 of 2016

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Binod Kumar Singh, son of Late Rama Prasad Singh, Resident of village- More Dihari, P.O.- Jamhor, District- Aurangabad. At present posted as Peon in the Office of Assistant Commissioner (In-charge), Commercial Taxes, Saharsa, Circle Saharsa

.... Appellant/s

Versus

1. The State of Bihar
2. Principal Secretary-cum-Commissioner, Commercial Taxes, Patna, Bihar, Patna
3. Joint Commissioner, Commercial Taxes, Patna
4. Assistant Commissioner (In-charge), Commercial Taxes, Saharsa Circle, Saharsa

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Prasad Singh, Advocate

For the Respondent/s : Mr. Bishwa Bibhuti Kumar Singh, A.C. to PAAG-1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 29-06-2017

Seeking exception to an order dated 18.04.2016 passed by the learned Writ Court in C.W.J.C. No. 12981 of 2011 dismissing the writ petition and rejecting a prayer made by the appellant with regard to payment of salary for the period the appellant remained under suspension, this appeal has been filed under Clause 10 of the Letters Patent.

2. Appellant was working in the respondent's department on the post of Peon and because of his involvement in a criminal case initiated against him under Section 364A/120B of the Indian Penal Code, he was arrested and taken into custody on 01.11.2005. Eminently on his arrest, he suffered deemed suspension in accordance to the provisions of the Bihar Service Code. However, on 11.09.2007 he was acquitted of the charges in the criminal case and on 10.07.2009 vide order passed by the competent authority, the period of suspension was revoked and he was taken back on duty. Subsequently, vide Annexure-2 to the writ petition on 22.06.2010 the disciplinary authority exercising its power under Rule 97 of the Bihar Service Code directed that in view of his acquittal in the criminal case and taking note of the facts of the case it was decided that no departmental action is required to be taken against him but ordered that for the period he remained under suspension, no further monetary benefit, except the Subsistence Allowance already paid to him, shall be paid.

3. Inter alia contending that once the appellant is acquitted of the charges and when the department decided not to proceed departmentally in the matter, appellant was entitled to full salary for the period of suspension after deducting the Subsistence Allowance, the writ petition was filed and the Writ Court having rejected the same, this appeal under Clause 10 of the Letters Patent.

4. A perusal of the order passed by the learned Writ Court goes to show that the learned Writ Court has simply recorded a finding that because the Criminal Court has granted the benefit of doubt to the appellant while acquitting him, the Writ Court does not find any reason to interfere into the matter. However, while doing so, the learned Writ Court did not take note of the statutory provisions in the matter of revocation of suspension, reinstatement of an employee and regularizing the period of suspension, as is contained in Rule 97 of the Bihar Service Code. Rule 97 of the Bihar Service Code reads as under:-

> "97. (1) When a Government servant who has been dismissed, removed or suspended, reinstated, the authority competent to order the reinstatement shall consider and make specific order-
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> (a) Regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, and
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> (b) Whether or not the said period shall

be treated as a period spent on duty

(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled has he not been dismissed, removed or suspended, as the case may be

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe;

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowance are admissible

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that if the Government servant so desires such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant."

5. A perusal of the aforesaid provision goes to show that

when a Government servant is suspended and when he is reinstated, the Disciplinary Authority has to pass a specific order with regard to pay and allowance to be paid to the Government servant for the period he was under suspension or prevented from performing duty or was absent from duty. Thereafter sub-rule (2) of Rule 97 mandates that the competent authority who proceeds to take action under sub-rule (1) has to record an opinion in case the employee has been fully exonerated as to whether the suspension was wholly unjustified and whether the employee shall be entitled to full pay and allowances for the period he was under suspension or how the period of suspension is to be considered. A complete reading of the Rule goes to show that while revoking the suspension and reinstating an employee, the Disciplinary Authority is required to record the reason as to why and in what manner the period of suspension is to be reckoned, whether the employee shall get full salary for the said period and if the salary is to be denied to the employee with reason for the same. In the impugned action undertaken by the department in question, as is evident from Annexure-2 dated 22.06.2010, it is seen that except for recording a finding to say that appellant has been acquitted in the criminal case now no departmental action is required to be taken, nothing is indicated as to why salary apart from Subsistence Allowance is being denied for the period of suspension. That being so, we are of the considered view that as the Disciplinary Authority has not recorded any opinion or reason with regard to why the salary and allowance for the suspension period is to be denied, the learned Writ Court in all fairness and under law should have allowed the writ petition and remand the matter back to the Disciplinary Authority for recording a reason/opinion and passing a fresh order as required under Rule 97 (1) read with sub-rule (2). On the contrary by recording a finding and holding that the Criminal Court has granted benefit of doubt to the appellant and, therefore, the appellant is not entitled to any benefit, the learned Writ Court has stepped into the shoes of the Disciplinary Authority and exercised the powers available to the Disciplinary Authority under Rule 97 (1)(2) which the learned Writ Court should not have done, instead, should have granted liberty to the Disciplinary Authority to exercise this option and thereafter consider it in case challenged subsequently.

6. Keeping in view the aforesaid, we allow this appeal, quash the order passed by the learned Writ Court so also the order dated 22.06.2010 passed by the Disciplinary Authority and remand the matter back to the Disciplinary Authority to pass an order afresh with regard to the period of suspension in accordance to the requirement of Rule 97 (2) of the Bihar Service Code. The Disciplinary Authority shall pass an order within a period of two

months from the date of receipt of certified copy of this order.

7. With the aforesaid, we allow this Letters Patent Appeal.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

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