

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6669 of 2015

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Dinesh Kumar Sharma, son of Late Bhup Narayan Sharma, Resident of village-
Goriyagaon, P.S.- Saraiya, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar,
2. Principal Secretary, Department of General Administration, Govt. of Bihar,
Patna.
3. Principal Secretary, Disaster Management Department, Govt. of Bihar, Patna.
4. District Magistrate, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Thakur

For the Respondent/s : AC to GP No. 7

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 02-05-2017

1. Heard Sri Ajay Thakur, learned counsel , assisted by Sri
Pravin Kumar, learned counsel for the petitioner and learned AC to
GP No. 7

2. The petitioner, has approached this Court invoking its
writ jurisdiction under Article 226 of the Constitution of India, with a
prayer to quash an order contained in Memo No. 401 dated
06.04.2015 issued by the District Magistrate, Muzaffarpur. By the
said order petitioner was removed from service solely on the ground
of his conviction recorded by learned Additional District and
Sessions Judge – 8th , Muzaffarpur in Sessions Trial No. 787 of
2008/Sessions Trial No. 329 of 2009 invoking power under Article



311 (2) of the Constitution of India. The petitioner was initially posted as Clerk in the District Disaster Management Office, Muzaffarpur and he was posted on deputation in the District Nazarat Muzaffarpur. At that very time a police case vide Saraiya P.S. Case No. 125 of 2008 was registered for the offence under Sections 302, 120-B/ 34 of the Indian Penal Code and Section 27 of the Arms Act and petitioner along with others was arrayed as accused. It is case of the petitioner that though the offences alleged in the F.I.R. was not in relation to discharge of official duty but in the said trial petitioner was held guilty and convicted and sentenced for imprisonment for life. After the order passed in the Sessions Trial i.e. Sessions Trial No. 787 of 2008/ Sessions Trial No. 329 of 2009 the petitioner was removed from service vide Annexure '1' to the writ petition i.e. order contained in Memo No. 401 dated 6.4.2015. It has been pleaded that save and except the ground of conviction there was no any other ground for removal of the petitioner nor any regular departmental proceeding was initiated against the petitioner. Only on the basis of conviction he was removed from service. The judgment and sentence passed in Sessions Trial No. 787 of 2008 / Sessions Trial No. 329 of 2009 was assailed by the petitioner before this Court by way of filing Appeal vide Criminal Appeal (DB) No. 916 of 2014 which was heard along with other three Appeals and finally a Division Bench



of this Court allowed all the Appeals. It has been argued that since the judgment of conviction and sentence has already been set aside by a Division Bench, the order of removal which was passed only on the ground of conviction is liable to be set aside.

3. In this case a counter affidavit and supplementary counter affidavit has been filed on behalf of the respondent no. 4. However, the fact that petitioner was removed from service only on the ground of conviction in the criminal case has not been disputed. In the counter affidavit a plea has been taken that in view of provision contained in Rule 13 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 the petitioner after conviction was rightly removed from service, however no other ground has been taken to support the order of removal. Learned counsel for the petitioner has argued that once the order of conviction has already been set aside, the order of removal of the petitioner i.e. Annexure '1' is liable to be set aside and petitioner be directed to be reinstated with all consequential benefits.

4. Learned State Counsel has opposed the prayer of the petitioner but he was not in a position to satisfy the Court as to whether besides the ground of conviction, was there any other ground for removal of the petitioner from service. In view of the fact that petitioner by the impugned order i.e. Annexure '1' was removed



from service only on the ground of his conviction and said judgment of conviction has been set aside by a Division Bench of this Court, there is no reason to allow the order of removal to further continue. Accordingly, in view of acquittal of the petitioner from criminal case as well as the fact that the petitioner was not separately proceeded and he was removed only on the ground of conviction, the order impugned is liable to be set aside. Accordingly , the order contained in Annexure ‘1’ is set aside and the writ petition stands allowed with all consequential benefits.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N/A
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