

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1242 of 2015
In
Civil Writ Jurisdiction Case No.13904 of 2008

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Dharmadeo Singh son of Late Hari Haran Singh resident of village -
Bishunpur, Pakari , near Pioner, Co- operative , Colony, P.S.- Beur, District-
Patna. At Present Posted as Junior Engineer, Minor Irrigation, Division, Gaya.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Secretary, Minor Irrigation Department , Patna.
3. The Under Secretary, Minor Irrigation Department , Patna.
4. The Deputy Secretary , Minor Irrigation Department , Patna.
5. The Chief Engineer , Minor Irrigation Department , Patna.
6. The Superintending Engineer, Minor Irrigation Circle, Gaya.
7. The Executive Engineer , Minor Irrigation Division, Gaya.
8. The Assistant Engineer, Minor Irrigation Sub - Division, No. 1.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Raj Dular Sah, Advocate
For the Respondent/s : Mr. Chittranjan Sinha, PAAG-2

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-10-2017

Seeking exception to an order dated 30th of April,
2015, passed by the learned Writ Court in C.W.J.C. No.13904



of 2008, this appeal has been filed under Clause 10 of the Letters Patent.

The order passed by the learned Writ Court reads as under:

“Writ application is dismissed now for the reason that the issue has remained academic, especially when petitioner has superannuated years ago in the year 2009.”

However, on going through the facts available on record, we find that the petitioner was working as a Junior Engineer in the Minor Irrigation Division, Gaya at the relevant time. It is alleged against him that vide Memo. Dated 10.9.2004 the Executive Engineer had ordered him to take over charge of the store from one Shri Brahmchari Devendra Kumar who has been allocated to the State of Jharkhand after bifurcation. It is stated that in spite of repeated communications made, the petitioner did not take over the charge and, thus, committed breach of the direction of his superiors. It is further the case of the State Government that the Superintending Engineer also directed the appellant, which order was flouted by him and, therefore, the Executive Engineer prepared a Memo. Against the appellant and on 14.6.2005 recommended for taking departmental action against him vide Annexures C/1 and C/2. It



is stated that the applicant submitted his explanation and a minor punishment of censure for the year 2004-05 and stoppage of one increment with non-cumulative effect was imposed upon the petitioner.

Even though in the counter affidavit it is indicated that Annexures C and C/1 are the copies of the letters sent to the petitioner and the petitioner submitted his explanation vide Annexure D, we find that the documents available on record are not the ones referred to in the counter affidavit. Annexure C is a communication by the Executive Engineer to the State Government in the Department of Minor Irrigation, informing about the proposed action and Annexure C/1 is a communication to the applicant asking him to give his explanation within a week. However, neither the charge-sheet or the explanation submitted by the petitioner nor the documents evidencing the departmental enquiry are available on record. On the contrary, it is the specific case of the petitioner that impugned action has been taken against him without hearing him and without granting him any opportunity of giving his explanation or say in the matter.

That apart, we find from the documents available in the record of the writ petition that vide Annexure-12 dated



9.10.2006, the Executive Engineer has indicated that no communication was received from the Government requesting the petitioner or directing him to take over charge and it is not known as to in the absence of such communication how could the petitioner be held liable for not taking over charge.

Be that as it may, the fact remains that punishment of censure and stoppage of one increment with non-cumulative effect has been imposed upon the petitioner. This is a minor punishment and can be imposed only after following the requirement of law as contemplated in Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

Under the aforesaid Rule, even for the purpose of imposing a minor punishment like stoppage of increment with non-cumulative effect, a charge-sheet has to be issued and explanation of the delinquent employee obtained and thereafter a punishment order has to be issued. In this regard, the procedure contemplated under Rule 19 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 may be taken note of.

In this case, there is no evidence available on record with regard to compliance of the aforesaid Rule. Neither the charge-sheet issued to the petitioner, nor his explanation are



available on record and even if it is assumed that this procedure was followed, a perusal of the impugned order of punishment goes to show that there is no consideration of the explanation or the defence of the petitioner and without application of mind and without passing a speaking order, the punishment has been imposed which only says that the explanation submitted by the petitioner is not satisfactory. This does not meet the requirement of law. When a punishment is being imposed and an explanation is given by the employee, the explanation has to be considered, the defence of the employee analyzed and thereafter it has to be accepted or rejected by a speaking order showing application of mind. None of these statutory requirements or the requirement of the principle of Natural Justice have been complied with in the present case and the learned Writ Court also committed an error in rejecting the writ petition only on the ground that now, as the employee has retired in 2009, the issue is of only academic interest. However, it is seen that the applicant immediately in 2008 itself filed the writ petition and once an adverse order of punishment was imposed upon him in violation of requirement of statutory Rules, it was a fit case where indulgence should have been made and impugned action quashed.



As the learned Writ Court has not considered all these aspects of the matter and as we find that the punishment has been imposed without following the due process of law, we allow this appeal, quash the impugned order and direct for release of all consequential benefits to the petitioner.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

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