IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17347 of 2016

Raju Kumar Mishra, son of Late Gauri Shankar Mishra, Nehru Tola, Begumpur, P.S.- Chowk (Patna City), District- Patna- 800009.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Municipal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Superintendent of Excise, East Champaran, Motihari.

... ... Respondents

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate Mr. Alok Chandra, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, A.G. Mr. Hari Shankar Roy, A.C. to A.G.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 27-11-2018

Heard learned counsel for the petitioner and learned counsel for the State.

2. This petition can be disposed of on a short point, which has been raised by the petitioner that the appellate authority has exercised the power of the disciplinary authority, thereby inflicted minor punishment of stoppage of three increments with non-cumulative effect upon the petitioner as well as proper procedure of departmental proceeding was not followed.

3. A proceeding was initiated against the petitioner, in which the Inquiry Officer submitted his report in favour of the petitioner. The disciplinary authority disagreed with the report of the Inquiry Officer, but has recorded that on technical ground the Inquiry Officer has not found the charge proved. The law is very much settled as in the case of ***Punjab National Bank vs. Kunj Bihari Mishra*** reported in ***1998 (7) SCC 84*** and in the case of ***Yoginath D. Bagde vs State Of Maharashtra & Anr.*** reported in ***AIR 1999 SC 3734***, that if the disciplinary authority differs with the view of the Inquiry Officer he has to record a tentative reason for disagreement and would ask the explanation from the Government servant and after consideration of the show-cause, the disciplinary authority will pass the order after due consideration of the explanation received from the Government servant, which admittedly having been not done in the present case, except a vague statement has been made that the petitioner has been let off in the Inquiry on technical ground.

4. Further, the plea has been made that the Commissioner is the disciplinary authority whereas the Member of the Board of Revenue is the appellate authority, but in this case, the State has exercised that power and passed the order against the petitioner, thereby he has been deprived of the right to appeal and submitted that when the right of appeal is there, the State cannot take away the same from the petitioner.

5. In support of his submission, he has placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of ***S. Loganathan v. Union of India*** reported in ***(2012) 1 SCC 293***. In that case, the Hon'ble Supreme Court has held that higher authority than the disciplinary authority can exercise the power and inflict a punishment, but he should not be the appellate authority and thereby the right of appeal would remain protected. In the present case, the Government has exercise the power, thereby the right of appeal of the petitioner has been taken away.

6. In both the counts, the order passed by the Special Secretary, Bihar, Patna, containing memo no.3156 dated 05.07.2016 does not survive, accordingly the same is quashed. The matter is remanded back to the disciplinary authority to consider the case of the petitioner afresh and take decision in accordance with law within a period of two months from the date of receipt/production of a copy of this order. It is clarified that this Court is not giving any opinion on the merit of the case.

7. With the aforesaid observations and directions, this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	30.11.2018
Transmission Date	N/A.