

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14293 of 2013

SUBHASH KUMAR @ SUBASH KUMAR SINHA @ SUBHASH KUMAR
SINHA SON OF LATE JUGESH BIHARI CLERK, CIVIL COURT, ARA,
BHOJPUR, RESIDENT OF MOHALLA - MAHADEVA ROAD (SAHELI
SHRINGAR VALI GALI), POLICE STATION - ARA TOWN, DISTRICT -
BHOJPUR

... .. Petitioner/s

Versus

1. The High Court Of Judicature At Patna Through Its Registrar General, Patna High Court, Patna
2. The Registrar Administration, Patna High Court, Patna
3. The District Judge, Bhojpur At Ara
4. The Registrar, Civil Court, Bhojpur At Ara

... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Roona, Adv.
For the Respondent/s : Mr. Binodanand Mishra, Adv .

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 03-04-2018

This writ petition under Article 226 of Constitution of India has been filed for quashing the order passed by District Judge, Bhojpur at Ara being order No. 14 of 2011 dated 5.3.2011 by which he has been inflicted with punishment of withholding two annual increments for ever as well as order passed by Patna High Court dismissing the appeal of petitioner.

Briefly stated facts of the case is that petitioner is working as an office clerk in the District Court, Bhojpur at Ara for



the last 25 years. Petitioner was served a memo of charge by the District and Sessions Judge, Bhojpur at Ara dated 30.10.2009 alleging therein that being posted as office clerk failed to communicate the order dated 31.8.2009 in Cr. Misc. No. 24627 of 2009 which was to be sent to the trial court of 6th Additional Sessions Judge, Bhojpur, who was holding trial of Sessions Trial No. 496 of 2008 and said order was received in the office on 30.10.2009 from the office of Chief Judicial Magistrate.

Petitioner was asked to file his show cause before the enquiry officer, the Additional District and Sessions Judge, Bhojpur and petitioner filed his show cause which was received by enquiry officer on 28.3.2010. In the show cause it was stated that the aforesaid case was committed to the court of sessions on 4.9.2008. The record of the case was also sent to the Sessions Judge on 12.9.2008.

The Committing Magistrate Sri B. M. Singh was transferred and Sri B. K. Singh became Incharge Magistrate. The order of High Court in Cr. Misc. No. 24627 dated 31.8.2009 was received by petitioner on 30.10.2009 and by that time the records were sent to the office of Sessions Judge after commitment.

The show cause further disclosed that by Memo No. 2336 dated 4.11.2009 the petitioner was made aware of an



inspection by the team of Patna High Court. As such, out of nervousness he could not send the aforesaid order to the Court of Sessions or to the concerned court and the said order could be made available to the concerned court on 17.7.2010 and for which petitioner tendered his apology for his negligent act. The petitioner appeared before the Enquiry Officer and after the evidence of employees petitioner was also asked to put forth his defence or to adduce any evidence. Petitioner received the second show cause notice along with enquiry report dated 4.12.2010 in Enquiry Case No. 2 of 2010. In the enquiry report petitioner along with one Harendra Singh, Stenographer, was found guilty of negligence and misconduct.

Petitioner filed his second show cause and stated that in paragraph-12 of enquiry report he has been found guilty of certain act for which petitioner was never charged and there has been no complaint against him in the last 25 years of service and submitted that it was bonafide negligence out of nervousness, as such a lenient view may be taken.

The District and Sessions Judge, Bhojpur, the Disciplinary Authority after considering the show cause and materials on record passed an order of punishment withholding two future annual increment forever. Harendra Singh, who was



also proceeded for similar allegation, was also imposed similar punishment. Petitioner preferred the statutory appeal which was forwarded to High Court but same was dismissed as communicated to petitioner by letter dated 26.4.2013 by Registrar(Administration).

It is relevant to state here by the order dated 28.7.2010 passed in Cr. Misc. No. 18294 of 2010 High Court had expressed its displeasure holding one Harendra Kumar Singh and petitioner to be responsible for withholding of the order passed by High Court and as such High Court ordered that Harendra Kumar Singh, Stenographer, be put under suspension and it was observed against petitioner that he shall not be put under suspension but should be proceeded departmentally by drawing up charge.

Subsequently, charge was framed against petitioner for withholding of order passed in Cr. Misc. No. 2467 of 2009 (Annexure-1). Petitioner filed his reply explaining circumstances of delay and prayed for exoneration from charges. However, the enquiry proceeded against petitioner and said Harendra Kumar Singh and the enquiry officer cum Additional District and Sessions Judge, Bhonjpur, Arrah, in his enquiry report held both of them guilty of charges.



It has further been submitted that charge against petitioner was for withholding the order passed in Cr. Misc. No. 2467 of 2009. However, in para-12 of enquiry report the enquiry officer also included withholding of order passed in Cr. Misc. No. 39755 of 2008 although petitioner was not proceeded for said charge, and same was not part of charge served upon petitioner and on the basis of said enquiry report the District and Sessions Judge, Bhojpur, on 28.7.2012 without considering second show cause filed by petitioner imposed punishment of withholding two increments forever on petitioner as well as Harendra Kumar Singh and both of them preferred appeal before the High Court and appeal filed by petitioner was dismissed vide order dated 25.4.2013. The appeal filed by Harendra Kumar Singh was allowed by order dated 25.4.2013.

It has been submitted on behalf of petitioner that for the same allegation petitioner and Harendra Singh were proceeded and enquiry officer found them guilty of charges and the District and Sessions Judge, Disciplinary Authority, inflicted same punishment of withholding two increments forever and on appeal being filed by both of them, appeal of petitioner has been dismissed whereas appeal filed by said Harendra Kumar Singh has been allowed.



It has been submitted on behalf of petitioner that there has to be parity in punishment and if Harendra Singh's appeal has been allowed although he was proceeded along with petitioner for similar allegation and both were found guilty by the enquiry officer and similar punishment was imposed by the Disciplinary Authority i.e. the District and Sessions Judge, Bhojpur, Arrah, then petitioner is also entitled to get benefit of the order passed in favour of Harendra Singh.

After hearing learned counsel for the parties, this Court finds that there has to be parity in punishment and if for similar allegation and similar punishment the appeal filed by Harendra Singh has been allowed and order of punishment has been set aside, petitioner is also entitled for similar benefit as petitioner and said Harendra Singh are similarly placed.

There can be no varying standard in imposing punishment for same misconduct. The Apex Court in ***Man Singh Vs. State of Haryana*** since reported in ***2008(12)SCC 331*** in paragraph nos. 21 and 22 have held as following:-

“ 21. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit



who, besides departmental proceedings, was an accused in the excise case filed against him by the excise staff of Andhra Pradesh for violating the excise prohibition orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served in the Police Department of Haryana in different capacities with unblemished record of service.

22. In the backdrop of the abovementioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the second appeal by an unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-a-vis HC Vijay Pal, the driver of the vehicle.”



Having held so the order dated 5.3.2011 passed by the District and Sessions Judge, Bhojpur, Arrah, imposing punishment against petitioner as well as order dated 25.4.2013 passed by the High Court dismissing the appeal of petitioner are set aside. Petitioner is entitled for all consequential benefits.

The writ petition stands allowed.

(S. Kumar, J)

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