

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13845 of 2010**

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Nawlesh Kumar S/O Late Dwarika Prasad Singh R/O Vill Salalpur,  
P.S.Akangar Sarai, Distt-Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar Through The Secretary-Cum-Legal Remembrancer,  
Department of Law Government Of Bihar, Patna
2. The District and Sessions Judge -cum-the Disciplinary Authority Civil Court,  
Bhagalpur
3. Subordinate Judge-I Cum-the Enquiry Officer Civil Court, Bhagalpur
4. The Incharge Judge, Accounts Civil Court, Bhagalpur
5. The Hon'ble High Court Of Judicature at Patna -cum-the Appellate Authority,  
through its Registrar General Patna High Court, Patna

... .. Respondent/s

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**Appearance :**

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|----------------------|---|---------------------------------|
| For the Petitioner/s | : | Mr. Purushottam Kumar Jha, Adv. |
| For the Respondent/s | : | Mr. (SC5)                       |
| For the Resp. 2 to 5 | : | Mr. Piysh Lall, Adv.            |

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL JUDGMENT**

**Date : 08-05-2018**

Heard learned counsel for the petitioner and counsel for  
the District Judge, Bhagalpur.

In the present case, the petitioner is challenging the  
order no. 62 dated 31.5.2010 by which the petitioner has been  
awarded punishment of censure.

On 20.8.2002, the petitioner for the first time was posted  
in the office of Chief Judicial Magistrate, Civil Court, Bhagalpur  
as G.R. Clerk, he was proceeded departmentally for four charges  
and, out of that, he has been exonerated from the charge nos. 2 & 3  
but, has been found guilty of charge nos. 1 & 2 and, for those  
charges, the punishment was awarded against the petitioner of



stoppage of increment for one year vide order no. 45 dated 25.5.2006 which was challenged by the petitioner before this Court in C.W.J.C. No. 2074 of 2008 taking a plea that such irregularity had been committed by his predecessor but had never taken any action against them and he has been singled, out proceeded departmentally and punished and, as such, he was wrongly punished by the Disciplinary Authority, the District Judge, Bhagalpur.

This Court in the order dated 23.2.2010 has recorded the punishment and the manner the District Judge has exercised its discretionary, the Court on facts of a case may decline to interfere with the order of minor punishment even if the court satisfied that the petitioner has a case to assail the punishment. Further held that if the exercise has been done properly, in such circumstances, the court may refuse to interfere with an order which may otherwise warrant interference but, in the last but two paragraphs, the court has said that the Court was not satisfied to interfere with the punishment on the admission of the petitioner, and also said that the Court is equally satisfied as far as quantum of punishment is concerned, the contention which was weighed was singled out, was meted with treatment merits appropriate consideration, whereafter the court has said that even a solitary case of



appropriate action was taken, in such circumstances, the District Judge will refuse and refrain to interfere with the quantum of punishment but, in contra, if there is no precedent, in such circumstances, the District Judge will reconsider the quantum of punishment. It will be relevant to quote the relevant portion of the said judgment which reads as follows:-

*“While this Court is satisfied not to interfere with the punishment on the admission of the petitioner, this Court is equally satisfied that as far as quantum of punishment is concerned, the contention that he has been sing led out for such treatment merits appropriate consideration.*

*The matter is, therefore, remanded to the District Judge, Bhagalpur, to reconsider the order of punishment on the quantum only. If the District Judge finds that even a solitary case of appropriate action whatsoever be their against those who had committed similar misconduct as alleged against the petitioner earlier, the quantum of punishment shall require no interference. But if he comes to the conclusion that those before the petitioner who had committed errors and which was the precedent on which the petitioner had acted in that event, he shall require to reconsider the quantum of punishment.*

*This Court without interfering with the order of punishment set aside the same on the quantum only as also affirmed in appeal for the purposes of such fresh reconsideration limited to the issue of quantum only, within a period of three months from the date of receipt/production of a copy of this order.”*



In pursuance thereof, it appears that the District Judge has proceeded further and sought information from the office about the status of precedent, in the order impugned dated 31.5.2010, it has been recorded that the Office Superintendent vide report dated 15.5.2010 in writing that not a single staff of that judgeship having similar allegation as that of Sri Nawlesh Kumar was awarded punishment earlier but, the District Judge has passed the order of punishment of censure against the petitioner which is under challenge.

Learned counsel for the petitioner has submitted that no past precedence is available for inflicting punishment for that misdemeanor and the petitioner has been singled out, proceeded and punished. Earlier this Court has refused to interfere with the order of punishment or proceeding, given direction that if any precedent is available of past, the Disciplinary Authority will not interfere but, if the same is not there, liberty was given to take appropriate action.

Learned counsel for the petitioner submits that if the office superintendent has specially informed that no such precedent is available, in such circumstances, the petitioner could not have singled out and awarded punishment of censure.



Mr. Piush Lal, learned counsel for the District Judge, Bhagalpur, has submitted that on reading of the order passed by this Court, it is very much clear that the Court has not interfered with the finding of misconduct, but liberty was given to the District Judge with a direction if no precedent is there, he can interfere with the punishment. In such circumstances, some punishment was obliged to be passed by the District Judge and, as such, the District Judge has passed the impugned punishment of censure.

The order has to be looked into in its context and subject. If there is no precedent is available for proceeding and punishment then, in such circumstances, singly punishing the person will have adverse effect on moral of the employee and, as such, requires interference by this Court as the Court was of the view earlier that in case no precedent was available, interference on punishment was approved.

This Court is of the view that there is nothing on record to show that ever any punishment inflicted upon any person. In such circumstances, this Court feels necessary to interfere with the order of the District Judge dated 31.5.2010 (Annexure-12) and, accordingly, the punishment of censure is set aside.



The petitioner has any grievance, he may raise the same before the appropriate authority which will be dealt with in accordance with law. This Court is not giving any direction for payment of back-wages except what he has been paid as subsistence allowance.

In the result, this writ application stands allowed to the extent indicated above.

**(Shivaji Pandey, J)**

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