

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1071 of 2015

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Kapleshwar Sah Son of Late Manraj Sah, Resident of Village - Jagrishpur, P.S. - Pusa, District - Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Minor Water Resource (Laghu Lal Sansadhan), Department, Government of Bihar, Patna.
3. The Special Work Officer, Minor Water Resource, Department Bihar, Patna.
4. The Joint Secretary, Minor Irrigation Department, Govt. of Bihar, Patna.
5. The Deputy Secretary, Minor Irrigation Department Govt. of Bihar, Patna.
6. The Chief Engineer, Tube Well Prabhag, Muzaffarpur.
7. The Superintending Engineer, Tube-Well Circle, Darbhanga.
8. The Superintending Engineer, Minor Water Resource Circle, Darbhanga.
9. The Executive Engineer, Tubewell Division, Begusarai.
10. The Executive Engineer, Minor Irrigation Division Begusarai.
11. The Executive Engineer Tubewell Division, Samastipur.
12. The Executive Engineer, Minor Irrigation Division Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar, Advocate

For the Respondent/s : Mr. Nirmal Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 09-04-2018

Heard learned counsel for the petitioner and the respondent State.

2. Petitioner's counsel submits that the issue regarding the validity of his dismissal under order bearing no. 165 dated 29.08.2006 has been examined by this Court earlier in C.W.J.C. No. 7440 of 2007. This Court vide order dated 06.01.2012 had directed that the dismissal shall be subjected to result of Criminal Appeal No.



377 of 2000 filed by the petitioner since Clause 4 of the dismissal order itself made the order of dismissal subject to result of criminal Appeal No. 377 of 2000 filed by the petitioner. The dismissal was based on his conviction for offences under Section 302 IPC.

3. Counsel for the petitioner submits that since by order dated 13.09.2012 passed in Cr. Appeal No. 377 of 2000 his conviction has been set aside and he has been acquitted from the charges, the dismissal should accordingly have been modified by the respondent authorities.

4. The stand of the respondent authorities is that the proceedings in independent proceedings have been conducted against the petitioner for charge of unauthorized absence from duty, dereliction of duty and concealment of important facts such as lodging of the criminal case against him. It is submitted that charges under the disciplinary proceedings were proved against the petitioner. Therefore, the fact that he had been acquitted by the Hon'ble Court from the Criminal charges cannot inure to the benefit of the petitioner. It is submitted that in view of the independent charges have been established, the dismissal of the petitioner has been maintained.

5. This Court finds that earlier the petitioner had filed C.W.J.C No. 24152 of 2013. The same has been finally decided under order dated 25.11.2014. In the said case, this Court has taken judicial



note of the fact that separate departmental proceedings were initiated on 06.01.2003 for giving false information including misleading the department.

6. Petitioner's counsel submits that the petitioner was a Grade IV employee and therefore, for such minor lapse in not intimating the authorities regarding his absence on account of the criminal case, the department has imposed upon him severe punishment of dismissal from service. Such lapse thus stands admitted.

7. It appears that subsequent to the petitioner's acquittal in criminal appeal, the dismissal order dated 29.08.2006 has been modified and Clause 4 thereof to the extent it contemplated that the order would be subject to final outcome of the criminal proceedings has been deleted. The same has been done taking into consideration the fact that the petitioner was subjected to departmental proceedings in relation to his absence from service by misleading the authorities and without informing them that he had been in judicial custody in connection with criminal case. The order dated 29.08.2006 thus stood modified by the order dated 06.03.2014 issued by the Secretary, Water Resources Department, Government of Bihar.

8. It is submitted on behalf of the petitioner that the punishment awarded therein is disproportionate to the gravity of



charge since it was a minor offence of absence without informing the authorities. It is also submitted that instead of granting any benefit to the petitioner in terms of Clause 4 of the original dismissal order dated 29.08.2006, the Clause 4 has been deleted therefrom, denying the petitioner the benefit of petitioner's acquittal in Criminal Appeal No. 377 of 2000.

9. This Court in the circumstances finds that by modifying the initial dismissal order dated 29.08.2006 and deleting Clause 4 from the said order, the respondents have taken away the petitioner's right for reconsideration of his dismissal which was subject to the order passed in Cr. Appeal No. 377 of 2000. Such vested right arising out of the dismissal order dated 29.08.2006 has been taken away by the order dated 06.03.2014 issued by the Secretary, Water Resources Department whereby the dismissal order has been modified. The petitioner has thus, been deprived of reconsideration of the punishment of dismissal earlier awarded to him in terms of the order dismissal itself. Thus, by order dated 06.03.2014 a vested right of the petitioner has been taken away, the result of which is the penal consequence of his dismissal, in spite of him not being convicted in the criminal case.

10. The original dismissal order dated 29.08.2006 was solely on the basis of petitioner's conviction in the criminal case. Now



that he has been acquitted, the order dated 29.08.2006 could not have been sustained. Thus, in terms of the original dismissal order, the petitioner is entitled to reconsideration of the dismissal order since the sole basis on which it has been passed does not exist.

11. This right of reconsideration could not have been taken away by the order dated 06.03.2014 issued by the Secretary Water Resources, Department, Government of Bihar, without affording the petitioner any opportunity of hearing or recording new order of punishment of dismissal after affording the petitioner the procedural safeguard and in compliance with the Principle of Natural Justice by issuing a charge memo and after a duly constituted proceedings, a dismissal is a major punishment and could not have been inflicted otherwise.

12. The same having not been done. The order dated 06.03.2014 issued by the Secretary, Water Resources Department modifying the order of dismissal is unsustainable since the only reason that now remains for awarding any punishment to the petitioner as it appears from the order dated 16.03.2014 is the allegation regarding the petitioner having concealed the fact of his incarceration in respect of the criminal charges and consequent absence from duty.

13. In the circumstances, it is rightly submitted on behalf



of the petitioner that punishment of dismissal is disproportionate to the gravity of the charge and the petitioner is entitled to reconsideration of the award of punishment of dismissal.

14. This Court would therefore, grant liberty to the petitioner to approach the authorities to reconsider their orders of punishment of dismissal in light of the petitioner’s acquittal in Cr. Appeal No. 377 of 2000 and in light of the observations herein above. Such consideration must be done by the authorities within a period of three months from the date of receipt/production of a copy of this order.

15. It would be open to the petitioner to also file a comprehensive representation raising any other points that he may choose. If the same is done within four weeks, the same shall be considered otherwise and the authorities would be obliged to take a final decision in light of the observations and directions indicated herein above

16. The writ petition is disposed off with the aforesaid direction.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.04.2018
Transmission Date	

