

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1123 of 2017

IN

Civil Writ Jurisdiction Case No. 610 of 2017

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1. The State of Bihar.
2. The Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
4. The Special Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
5. The Under Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
6. The Deputy Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
7. The Commissioner (Excise) cum- Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
8. The District Magistrate, Nawada.

..... Appellant/s

Versus

1. Ashwini Kumar son of late Jagdish Prasad, Resident of Mohalla - Shivpuri, P.S. Hazaribagh, District Hazaribagh (Jharkhand) at present resident of Flat No. 301, Devlok Apartment, New Patliputra Colony, Patna - 800013, P.S. Patliputra, District - Patna (Bihar).
2. The Bihar, Public Service Commission, Patna through its Secretary.
3. The Chairman, the Bihar Public Service Commission, Patna.
4. The Secretary, the Bihar Public Service Commission, Patna.

..... Respondent/s

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Appearance :

For the Appellant/s:Mr. Lalit Kishore, Advocate General



For the Respondent/s:Mr.Ranjeet Kumar Advocate
:Mr. Kundan Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-10-2018

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge dated 09.05.2017 passed in C.W.J.C. No. 610 of 2017, the original respondents-State of Bihar and others have preferred the present Letters Patent Appeal.

2. At the outset, it is required to be noted that by the impugned judgment and order, the learned Single Judge has allowed the writ petition preferred by the respondent No.1 herein-original writ petitioner and has quashed and set aside the order of dismissal passed by the disciplinary authority, meaning thereby, the learned Single Judge, by the impugned judgment and order, has not only quashed and set aside the order of dismissal but also has quashed and set aside the entire proceedings including the charge-sheet and the inquiry report. Consequently, the learned Single Judge has directed the original respondents to reinstate the original writ petitioner with full consequential benefits.



3. Sri Lalit Kishore, learned Advocate General appearing on behalf of the appellants has stated at the Bar and has submitted that the appellants-State of Bihar and others as such, do not question the impugned judgment and order passed by the learned Single Judge insofar as quashing and setting aside the order of dismissal is concerned, however, it is submitted that the learned Single Judge has materially erred in quashing and setting aside the entire proceedings including the charge-sheet. It is further submitted by Sri Lalit Kishore, learned Advocate General appearing on behalf of the appellants that as such, in the facts and circumstances of the case and looking to the seriousness of the charges leveled against the delinquent, the learned Single Judge ought to have remanded the matter to the inquiry officer/disciplinary authority.

3.1. It is further submitted by Sri Lalit Kishore, learned Advocate General appearing on behalf of the appellants that, therefore, the learned Single Judge has materially erred in quashing and setting aside the entire proceeding including charge-sheet and not reserving the liberty in favour of the State/disciplinary authority to proceed further with the departmental proceedings in accordance with law and ought to have remanded the matter to the inquiry officer/disciplinary



authority.

4. Per contra, Sri Ranjeet Kumar, learned counsel appearing on behalf of original writ petitioner- respondent No.1 herein, has supported the impugned judgment and order passed by the learned Single Judge.

4.1. It is further submitted by Sri Ranjeet Kumar, learned counsel appearing on behalf of original writ petitioner- respondent No.1 herein, that as such, no request was made by the learned counsel appearing on behalf of the original respondents-disciplinary authority to reserve the liberty for fresh inquiry and/or to remand the matter to the inquiry officer/disciplinary authority.

4.2. It is further submitted by Sri Ranjeet Kumar, learned counsel appearing on behalf of the original writ petitioner- respondent No.1 herein that, even otherwise, as it was found that it was the case of no evidence and/or no witness was examined to the charge and therefore, the order of dismissal could not have been passed on the basis of the findings recorded by the inquiry officer in the inquiry report, which, as such, were not supported by any evidence.

4.3. Making above submissions and relying upon the decision of the Hon'ble Supreme Court in the case of **Anant R. Kulkarni Vs. Y.P. Education Society and Others** reported in



(2013) 6 SCC 515, it is requested to dismiss the present Letters Patent Appeal.

5. Sri Lalit Kishore, learned Advocate General appearing on behalf of the appellants has submitted that the decision of the Hon'ble Supreme Court in the case of **Anant R. Kulkarni** (supra), which has been relied upon by the learned counsel appearing on behalf of the original writ petitioner, shall not be applicable to the facts and circumstances of the case on hand and/or shall not be of any assistance to the original writ petitioner inasmuch as in the case before the Hon'ble Supreme Court, the learned Tribunal as well as the High Court themselves dealt with each and every charge and recorded their findings on merit and thereafter, it was found that the Division Bench was not justified in giving liberty to hold a fresh enquiry. It is further submitted that even in the same case, it was found that there was no allegation of misappropriation/embezzlement or any charge which may cast a doubt upon the integrity of the appellant, or further, anything which may indicate even the slightest moral turpitude on the part of the appellant and that the employee had already retired and it was noticed that no rule was pointed out conferring any statutory powers to the management to hold a fresh enquiry after the



retirement of an employee.

6. Heard learned counsel appearing on behalf of respective parties at length. It is required to be noted that as such the appellants/State of Bihar and others nor questioned the impugned judgment and order passed by the learned Single Judge insofar as quashing and setting aside the order of dismissal is concerned, however, it is the case on behalf of the appellants that in the facts and circumstances of the case and looking to the seriousness of the charges and misconduct alleged to have been committed by the delinquent, the learned Single Judge ought to have reserved the liberty in favour of the appellants to hold a fresh enquiry in accordance with law.

6.1. It is required to be noted that the departmental enquiry was initiated against the delinquent, which was very serious in nature if at all proved. The following three charges were framed against the delinquent, which read as under;

- "(a) Causing revenue loss to the State for not ensuring lifting of the minimum guarantee quota of India made foreign liquor/Beer.**
- (b) Colluding with the Licensee to secure personal gains; and**
- (c) Inefficiency in discharge of duties and disobedience of the orders of superiors."**

Along with the charge-sheet documentary



evidences were also produced. However, so relying upon the said documentary evidences, however, without examining any witness to prove the said documentary evidences, the enquiry officer held the charges proved against the delinquent. In absence of any witness examined to prove the allegations and/or to prove the documentary evidences upon which reliance was placed and copies of which were already furnished, the learned Single Judge has held that the enquiry and/or the enquiry report and order of dismissal are bad in law. However, the learned Single Judge has not reserved any liberty in favour of the Department to hold a fresh inquiry.

6.2. Considering the serious allegations and the misconduct alleged referred to hereinabove, and in the facts and circumstances of the case, we are of the opinion that the learned Single Judge would have reserved the liberty in favour of the Department to hold a fresh enquiry in accordance with law and rules.

6.3. It is required to be noted that in the State of Bihar, there is prohibition and as the allegations against the delinquent are in colluding with the licensee to secure personal gains and inefficiency in discharge of the duties and disobedience of the orders of superiors and also causing revenue loss to



the State, if the fresh enquiry would have been directed as such no prejudice shall cause to the original writ petitioner as ample opportunity will be given to the delinquent to prove his innocence in the fresh departmental enquiry.

7. Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of **Anant R. Kulkarni** (supra) by the learned counsel appearing on behalf of the original writ petitioner is concerned, on considering the facts of the said decision, we are of the opinion that as such the same shall not be applicable to the facts and circumstances of the case on hand and/or shall not be of any assistance to the original writ petitioner. In support of his case that no fresh enquiry is warranted, it is submitted that in the case before the Hon'ble Supreme Court, the learned Tribunal as well as the High Court themselves dealt with each and every charge and recorded their findings on merit and thereafter it was found that the Division Bench was not justified in giving liberty to hold a fresh enquiry. It is further submitted that even in the same case, it was found that there was no allegation of misappropriation/embezzlement or any charge which may cast a doubt upon the integrity of the appellant, or further, anything which may



indicate even the slightest moral turpitude on the part of the appellant and that the employee had already retired and it was noticed that no rule was pointed out conferring any statutory powers to the management to hold a fresh enquiry after the retirement of an employee.

8. In view of the above and for the reasons stated above, we modify the impugned judgment and order passed by the learned Single Judge to the extent to reserve liberty in favour of the appellant-State to hold a fresh *de novo* enquiry in accordance with law and the rules on the same charge. The present Letters Patent Appeal is *partly Allowed* to the aforesaid extent.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Brajesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

