

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.56 of 2015
IN
Civil Writ Jurisdiction Case No. 257 of 2013**

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Radhe Shyam Sharma, son of Late Sakaldeep Sharma, resident of Village - Tejpura,
P.S. & District - Arwal, Ex-Headmaster, Banshidhari High School, Bharatpura,
P.S.- Dulhin Bazar, District – Patna.

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Patna Division, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jay Prakash Singh, Adv.
Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. Chandra Shekhar Singh, AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 12-02-2018

Heard Mr. Jay Prakash Singh, learned counsel appearing for the
appellant and Mr. Chandra Shekhar Singh, learned Assisting Counsel to
Government Advocate No.10 for the State.

This appeal under Clause 10 of the Letters Patent of the High
Court of Judicature at Patna has been filed by the writ petitioner feeling
aggrieved by the judgment and order passed by the learned Single Judge
dated 6.1.2014 in CWJC No.257 of 2013 in dismissing the writ petition.

The writ petitioner-appellant was saddled with the punishment
order dated 31.12.1999 at Annexure 6, inter alia, on grounds of
misconduct. The order was passed by the Director, Secondary Education,



Bihar, Patna, who while censuring the writ petitioner for his misconduct ordered for stoppage of his two annual increments with non-cumulative effect. Feeling aggrieved he came before this Court in CWJC No.4689 of 2000 and vide Annexure 7 the writ petition was disposed of by the learned Single Judge taking note of the submission of the petitioner that he was not affected by the punishment of stoppage of increments. It was the case of the petitioner that he was entitled to payment of salary for the period of suspension because there was no order present in the punishment order restricting his pay and allowances for the suspension period to that of the subsistence allowance. The learned writ Court at that stage taking note of the concession of the petitioner as well as the fact that no order restricting his pay and allowance has been passed in the punishment order issued direction to the respondents to make payment of salary of the petitioner for the period 28.6.1997 to 11.7.1999. We deem it proper to place on record the concession of the petitioner present at paragraph 3 of the judgment and order passed by the learned Single Judge in CWJC No.4689 of 2000 which reads as under:

“It is submitted by learned counsel for the petitioner that after few months of the order impugned the petitioner superannuated, so he is not presently affected by the order of punishment or stoppage of increments, but he would be entitled for salary for the period of his suspension. It is also submitted that the order of suspension was revoked by the authorities on 11.7.1998 and since there is no punishment to the extent that ‘the petitioner would not be entitled for salary for the period of suspension except the subsistence allowance, the petitioner would be entitled for full salary.’”

It is on disposal of the said writ petition and after a lapse of 7



years since the filing of the earlier writ petition and passing of the impugned order that the writ petitioner got wiser to question the punishment order as affirmed in appeal through CWJC No.145 of 2007 as in the meantime the challenge of the petitioner to the punishment order had reached the appellate stage and had been rejected. The learned writ Court vide judgment and order dated 19.1.2012 remitted the matter to the appellate authority since in the opinion of the learned Single Judge, the appellate order was non-speaking. On remand, the appellate authority again dismissed the appeal which order was put to question before the writ Court in CWJC No.257 of 2013 on two grounds namely:

- (a) There is no application of mind by the appellate authority; and
- (b) The punishment of stoppage of increments could not have been applied retrospectively.

The learned Single Judge vide impugned judgment and order dated 6.1.2014 has been pleased to reject either of the two contentions of the writ petitioner taking note of the judgment and order passed by the learned Single Judge in CWJC No.4689 of 2000 which records concession of the petitioner in waiving of his challenge to the punishment order.

We have examined the materials on record and the judgment and order impugned and have gone a step further to make query from the learned counsel appearing for the writ petitioner as to the cause of action for him to maintain the 3rd writ petition arising from CWJC No.257 of



2013 because this Court has not found even a single piece of document on record which indicates that a retrospective effect was given to the punishment order. Learned counsel for the writ petitioner neither has been able to demonstrate from the materials the retrospective application of the punishment nor there is any document present in the 3 writ proceedings so preferred by the appellant.

In our opinion, an unnecessary ghost has been created by the writ petitioner to prefer the 3rd writ petition having waived his challenge to the punishment order that in a novice manner he seeks to challenge the same by giving it a retrospective application when there is none. In our opinion, there existed no occasion for the writ petitioner to maintain the writ petition which was ill founded on non-existent grounds.

We find no merit in this appeal which is dismissed accordingly but without any order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

SKPathak/-

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