

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.455 of 2017

In
Civil Writ Jurisdiction Case No.14415 of 2008

-
-
1. The State of Bihar through Secretary, Cooperative Society, Bihar, Patna.
 2. The Secretary, Co-operative Societies, Government of Bihar, Patna.
 3. The Registrar, Co-operative Societies, New Secretariat, Patna.
 4. The Joint Registrar, Tirhut Division, Muzaffarpur.
 5. The District Audit Officer, Co-operative Societies, Hajipur, District- Vaishali.
 6. The Joint Registrar, Co-operative Societies, Bihar, Patna.

... .. Appellant/s

Versus

Md. Mahtab Alam, son of Late Md. Khaluluddin, Resident of Mohalla-Shekhana Kala, P.S.- Biharsharif, District- Nalanda.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kunal Tiwary, AC to GA 2
For Respondent No.1 : Mr. Md. Anisur Rahman, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-03-2018

Seeking exception to an order dated 30th of April, 2015 passed by the learned Writ Court in C.W.J.C. No.14415 of 2008, this appeal has been filed under Clause 10 of the Letters Patent.

The respondent employee on account of the allegations of bigamy and suppression of fact with regard to the same amounting to misconduct under the Service Rule was proceeded



with, departmental enquiry conducted and thereafter vide order, Annexure 4 dated 20th of February, 2006, available in the record of the writ petition, a punishment of stoppage of three increments with cumulative effect was imposed upon him. Simultaneously, he was also suspended in view of the pendency of the criminal case and he was prosecuted in the criminal case.

Challenging the punishment order, Annexure-4, the writ petition was filed and during the pendency of the matter it transpired that in Complaint Case No.518(C) of 2004, Trial No.1197 of 2012, the court of Sub-divisional Judicial Magistrate has exonerated the petitioner of the charges levelled against him.

Taking note of the aforesaid, the learned Writ Court allowed the writ petition and quashed the punishment order after directing the payment of salary for the period of suspension only on the ground that the order of punishment has to go in view of acquittal in the criminal case. However, while doing so, the learned Writ Court failed to take note of the fact and the law with regard to the right of an employer to take departmental action even after acquittal in the criminal case and the fact that a decision in a criminal case is not binding on the employer and it does not preclude the employer from proceeding departmentally even after acquittal of the delinquent in the criminal case. Merely because the



employee has been acquitted in the criminal case, that does not mean that the punishment order based on the departmental enquiry also goes. To that extent, the learned Writ Court has committed a grave error as the law in this regard is well settled. Reference in this regard may be made to the judgments in the cases of Union of India And Another Versus Bihari Lal Sidhana, (1997) 4 SCC 385, State of Rajasthan Versus B.V. Meena and others, AIR 1997 SC 13, Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya And Others, (1997) 2 SCC 699, State Bank of Bikaner And Jaipur Versus Nemi Chand Nalwaya, 2011 4 SCC 584 and a catena of judgments wherein the principle of law laid down is that even after acquittal or during the pendency of a criminal case, for service misconduct, the Department has a right to proceed departmentally and punish an employee and the consequence and result of the criminal case does not come in the way of the employer in taking disciplinary action until and unless the evidence and the materials in the criminal case and the departmental proceedings are identical in nature, in which case the departmental action is prohibited as held in the case of Capt. M. Paul Anthony Versus Bharat Gold Mines Ltd. And Another, (1999) 3 SCC 679.

In this case, the employee was proceeded against departmentally and even before conclusion of the criminal case on



30th of April, 2012, he was punished on 20th of February, 2006 based on the evidence that came in the departmental enquiry. Both the proceedings being independent of each other, in our considered view, the learned Writ Court has committed a grave error in relying upon the judgment in the case of Capt. M. Paul Anthony (supra) and in interfering into the order of punishment only on the ground that the petitioner has been acquitted in the criminal case. In our considered view, the acquittal of the employee does not prevent or prohibit the employer to take departmental action in the matter, in this case departmental action having already been taken six years back, the same will not adversely affect and no change into the matter is called for after the acquittal in 2012.

Accordingly, this appeal has to be allowed primarily on this count. As far as regularising the suspension period is concerned, as the petitioner was the employee during the pendency of the criminal case and in the order of revocation of suspension, Annexure 4 dated 20th of February, 2006, when it was clearly stipulated that the question of regularizing the suspension shall be considered after disposal of the criminal case and once the employee is acquitted in the criminal case, he is entitled to full salary for the period of suspension and in granting the same to that



effect, the learned Writ Court has not committed any error warranting interference.

Accordingly, this appeal is allowed in part. The order passed on 30th of April, 2015 in C.W.J.C. No.14415 of 2008, so far as it pertains to directing for payment of full salary for the period of suspension, the same does not warrant any interference. However, the order passed quashing the punishment order dated 20th of February, 2006 is set aside. The order of punishment is restored and the consequential effect of the suspension shall be given effect to.

With the aforesaid, the appeal stands allowed in part and disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.04.2018
Transmission Date	

