

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18093 of 2016

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1. Awadhesh Kumar Gupta Son of late Kesho Lal R/o Mohalla- Jogsar, P.O. Bhagalpur, G.P.O., P.S. Kotwali, Distt. Bhagalpur, Pin Code-812001

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and land reforms Govt. of Bihar, Patna
2. The Divisional Commissioner, Munger Division, Munger-811201
3. The District Magistrate, Collectariate, Sheikhpura, Distt. Sheikhpura-811105
4. Circle Officer, Barbigha, Anchal Officer, Barbigha, Distt. Sheikhpura-811101

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Hira Prasad Pandey, Adv.

For the Respondent/s : Mr. Raj Kishore Roy- GP18

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-04-2018

Heard Mr. Hira Prasad Pandey, learned counsel for the petitioner and Mr. Raj Kishore Roy, G.P.18 for the State.

With the consent of the parties the writ petition has been heard with the view to final disposal.

The petitioner herein prays for quashing of the order No.885 (4) RA Patna-15 dated 28.07.2008 issued by the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar whereby the petitioner has been dismissed from service on grounds of his conviction by the Trial Court in Vigilance Case No. 44 of 1984 and sentenced to imprisonment of 1 and ½ years together with fine of Rs. 1000/-.



Facts of the case lie in a very narrow compass and it is because the petitioner was allegedly apprehended while accepting bribe which led to the institution of the Vigilance Case No. 44 of 1984 and in trial the petitioner was convicted and sentenced to 1 and ½ years of rigorous imprisonment with fine of Rs. 1000/-. It is taking note of the judgment and order of conviction and placing reliance on the Circular of the Department of Personnel and Administrative Reforms bearing No.7820 dated 28.10.2003 and letter No.2324 dated 10.07.2007 that the petitioner was dismissed from service for his conduct which led to his conviction. The power was purportedly exercised by the Principal Secretary under Article 311 (2) of the Constitution of India as he did not think it necessary to hold any formal disciplinary proceeding in view of the conviction of the petitioner.

The petitioner appealed against his conviction giving rise to Cri. Appeal (SJ)No.283 of 1994 and by a judgment and order passed by a learned Single Judge of this Court dated 30.4.2014, a copy of which is enclosed at Annexure-2, the petitioner was acquitted of the charges and discharged from the liability of the bail bonds. In between this period, the petitioner superannuated on 30.03.2011 but nonetheless, he represented before the Principal Secretary for reinstatement from the date of dismissal but which was not forthcoming and hence the writ petition.



I have heard learned counsel for the parties and I have perused the records.

There is no dispute that it is in exercise of powers vested in the disciplinary proceeding under Article 311(2) of the Constitution of India that the appointing authority without holding any disciplinary proceeding chose to dismiss the petitioner for his conduct leading to his conviction. In other words, the dismissal order is simply resting on the conviction of the petitioner. The conviction order has been set aside in appeal and the petitioner has been acquitted from the charges. Since the Principal Secretary while passing the impugned order of dismissal waived of the necessity of holding a regular disciplinary proceeding rather founded his opinion simply on the judgment and order of conviction by the Trial Court, by the judgment and order of acquittal passed by this Court in Cr. Appeal (SJ) No.283 of 1994, the very foundation for the dismissal order stands removed.

It is taking note of these issues that this Court vide order passed on 17.04.2018 required an affidavit to be filed by the Principal Secretary, Revenue and Land Reforms who despite the order passed has not chosen to file the affidavit rather has delegated the authority to the Under Secretary who has filed a perfunctory affidavit. In fact the statement made in paragraph 4 of the affidavit depicts a thoroughly confused State. Such is the seriousness with which the Principal



Secretary, Revenue and Land Reforms, has discharged his onus. A rather interesting letter is enclosed dated 20.04.2018 whereby, directions have been issued to the District Magistrate, Sheikhpura to make payment of pay and allowance to the petitioner to which he is entitled. This order is passed without realizing that before issuing such directions, the order of dismissal has to go and an order of deemed reinstatement needs to be passed.

Be that as it may, even otherwise the petitioner is entitled to the relief prayed because the foundation for the dismissal order stands removed on the acquittal of the petitioner from the criminal charge vide judgment and order enclosed at Annexure-4.

In the circumstances discussed and considering the judgment and order of acquittal of the petitioner, the order of dismissal bearing memo No.885 dated 28.07.2008 passed by the Principal Secretary, Revenue and Land Reforms impugned at Annexure-1 cannot be sustained and is accordingly quashed and set aside.

Since the petitioner in the meanwhile has reached the age of superannuation on 31.03.2011 he shall be deemed to have been reinstated with effect from the date of his dismissal on 28.7.2008 and shall be entitled to the pay and allowance which is found admissible with effect from the date of dismissal until his superannuation on 31.3.2011 as well as to the post retiral benefits as found admissible to



him which should be determined and paid within a period of 3 months from the date of receipt/production of a copy of the judgment of this Court.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.05.2018
Transmission Date	NA

