

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 2518 of 2015

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1 Smt Priyanka, daughter of late Prem Kumar, resident of Mohalla – Brahman Toli, Purani Bazar, Police Station – Town, District - Muzaffarpur

2 Hrithik Roy, son of later Prem Kumar, resident of Mohalla – Brahman Toli, Purani Bazar, Police Station – Town, District – Muzaffarpur

3 Mohini Kumari, daughter of late Prem Kumar, resident of Mohalla – Brahman Toli, Purani Bazar, Police Station – Town, District – Muzaffarpur

4 Megha Kumari, daughter of late Prem Kumar, resident of Mohalla – Brahman Toli, Purani Bazar, Police Station – Town, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar

2. The Principal Secretary, Department of Revenue and Land Reforms Government of Bihar, old Secretariat, Patna.

3. Divisional Commissioner, Muzaffarpur.

4. The Collector-cum-District Magistrate, Muzaffarpur.

5. The Assistant Collector, Muzaffarpur.

6. The Establishment Deputy Collector, Muzaffarpur.

7. The Circle Officer, Musahari Anchal, District - Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Ms Mahasweta Chatterjee, Advocate

For the State : Mr Anand Pd Singh, SC XV

Mr Sanjay Kr, AC to SC XV

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 20-04-2018

Heard the learned counsel for the petitioner as also the learned State Counsel.

2 The writ petition was filed for setting aside the order of punishment inflicted by the Disciplinary Authority under Memo No 459 dated 30.06.2014 (Annexure 6) whereby the original petitioner was inflicted with the punishment of dismissal. The other prayer is for quashing the order dated 08.12.2014 passed by the Appellate



Authority that is the Commissioner, Tirhut Division, Muzaffarpur on Appeal No 323 of 2014 (Annexure 7) converting the punishment of dismissal to that of compulsory retirement.

3 It is submitted by the learned counsel for the petitioner that bare perusal of the order dated 08.12.2014 passed by the Appellate Authority would show that he has come to a clear and definite finding that charges against the petitioner had not been proved and that at best, it was a case of suspicion. However, in the same breath, the Appellate Authority has proceeded to convert the punishment of dismissal into that of compulsory retirement which also is one of the punishments prescribed under Rule 14 (ix) of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for brevity, *Bihar CCA Rules*). Clearly, no punishment could have been inflicted in view of the findings of the Appellate Authority.

4 During pendency of the writ petition, the petitioner has passed away on 27.10.2016 where after, under order dated 06.02.2017 passed on Interlocutory Application No 9310 of 2016, the legal heirs of the deceased writ petitioner being his son and daughters were substituted as petitioners. Another Interlocutory Application being IA No 3022 of 2018 has been filed making a prayer that in view of the developments subsequent to filing of the writ petition, as noticed above, the prayer may be amended and the salary of the father



of the petitioners may also be directed to be paid from the date of order of the Appellate Authority being 30.06.2014 till 27.10.2016, i e, the date of death of the petitioners' father.

5 Learned counsel for the State has appeared and relied upon the stand taken in the counter affidavit. He submits that the stand of the State shows the bona fide treatment meted out to the original writ petitioner inasmuch as the punishment has been toned down by the Appellate Authority in the circumstances of the case. He submits that the punishment of compulsory retirement is proportionate in the given facts and circumstances.

6 On the perusal of the order passed by the Appellate Authority, Commissioner, Tirhut Division, Muzaffarpur on Appeal No 323 of 2014, which is Annexure 7 to the writ petition, it is quite obvious that the Appellate Authority has given a specific finding that these charges could not have been proved in the proceedings conducted against the original petitioner inasmuch as there was no evidence and other than suspicion, there was nothing else. The charges against the original petitioner, for which the proceeding had been conducted, was that he had engaged the services of three persons and was allowing them to discharge his official work for the post of *Halka Karamchari* and, as such, he had indulged in a grave misconduct and the same amounted to a corrupt practice. The



findings of the Appellate Authority is specific to the extent that even though the procedure prescribed for conducting proceedings have been followed but it could not be established in the proceedings with reference to any material that the petitioner was indulging in any corrupt practice and allegations did not occasion any financial irregularity or corruption. However, a finding has been recorded that the original petitioner's capacity to work and devotion to duty were lacking and, as such, the punishment of compulsory retirement has been awarded to the original petitioner. The findings arrived at by the Appellate Authority are at a total variance with the allegations made out in the charge memo.

7 Even otherwise, since the Appellate Authority has come to the conclusion that the charges could not be established, such findings appear to be perverse and could not have been arrived at on the basis of material available on record. Pursuant to the order of compulsory retirement, the deceased employee would have got all his dues in respect of salary till the date of issuance of the order passed by the appellate authority that is 08.12.2014 and his legal heirs are entitled to benefit of family pension, as admissible.

8 Today, the delinquent cannot be reinstated as in the intervening period, he has already passed away on 27.10.2016. The issue, therefore, is only confined to taking away the stigma from the



life of the deceased father of the instant petitioners.

9 In view of the findings of the Appellate Authority regarding the punishment being based on charges, which had not been established and based only on suspicion, this Court would come to a finding that punishment could not have been inflicted on the original petitioner as has been done by the order passed by the Appellate Authority dated 08.12.2014. Such findings, as noticed above, are without reference to any material in the course of enquiry and are also perverse. The Bihar CCA Rules clearly prescribes the scope and manner of consideration of appeal by the Appellate Authority. Once the Appellate Authority, in the instant case, has come to a finding as contemplated under Rule 27 (2) (b) of the Bihar CCA Rules regarding findings of the Disciplinary Authority being without reference to the evidence on record, there was no scope for the Appellate Authority to proceed to inflict the punishment of compulsory retirement, even if it is less than the punishment of dismissal awarded by the Disciplinary Authority. The order passed by the Appellate Authority is hereby quashed for the reasons indicated hereinabove.

10 As a result of quashing the order of the appellate Authority, the legal heirs of the delinquent would be entitled to all consequential benefits treating their deceased father to be in service till 08.12.2014, i e, the date of order passed by the Appellate



Authority.

11 Since the Appellate Authority has already given a finding regarding the order passed by the Disciplinary Authority being not based on any evidence and unsustainable, no order is required to be passed for quashing the order passed by the Disciplinary Authority.

12 The writ petition stands allowed to the extent indicated above.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2018
Transmission Date	NA

