

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1088 of 2017

Praduman Kumar Prasad, son of Late Krishan Deo Prasad, Resident of
Village-Mahammadpur, P.S.-Patahi, District-East Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, S.C. / S.T., Welfare Department, Govt. of Bihar, Patna
2. The Secretary, S.C. / S.T., Welfare Department, Govt. of Bihar, Patna
3. The Director, S.C. / S.T., Welfare Department, Govt. of Bihar, Patna
4. The District Magistrate, Bettiah West Champaran
5. The Deputy Director, S.C. / S.T., Welfare Department, Govt. of Bihar, Muzaffarpur.
6. The Deputy Director, S.C./S.T., Welfare Department, Govt. of Bihar, Muzaffarpur.
7. The District Welfare Officer, West Champaran, Bettiah

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Satyavrat Verma, Advocate
For the Respondent/s : Mr. Gyan Shankar, A.C. to GP-2

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 26-06-2018

Heard learned counsel for the petitioner and
learned counsel for the State.

2. In this case, the petitioner is challenging the order of punishment dated 17.02.2016, passed by the Director, SC/ST Welfare Department, Government of Bihar, Patna, whereby and where-under, the petitioner has been compulsorily retired from the service and direction has been issued to recover an amount of Rs.37,41,060/- from the movable and immovable property of the petitioner. Against that, the petitioner has filed an appeal



before the Hon'ble Minister concerned and that has also been rejected, which has been communicated to the petitioner vide order dated 14.09.2016.

3. This petition can be disposed of on a short point without going into the deep and merit of the case.

4. This Court vide order dated 19.06.2018 directed the State counsel to produce the original record with respect to departmental proceeding with respect to the petitioner as the petitioner has taken a plea that the disciplinary authority before passing the final order of punishment has taken approval from the appellate authority, which vitiates the punishment order itself as the disciplinary authority has to take decision independently without being influenced by any outside agency. At the same time, if the appellate authority has granted approval, on that basis the punishment has been awarded, in that circumstance, the opportunity of appeal is being taken away, which is not permissible in law as has been decided in the case of *Sujit Ghosh vs. United Commercial Bank and Ors.* reported in *A.I.R. 1995 S.C. 1053* and latest judgment rendered in the case of *Brij Bihari Singh vs. Bihar State Financial Corporation* reported in *2016(1) PLJR 27*.



5. It is well known principle of law that the disciplinary authority has to apply its independent mind not influence by any outside agency.

6. Learned counsel for the State has fairly conceded on the basis of the record that the order of punishment has been passed after approval of the appellate authority, itself depicts that the disciplinary authority has not applied its independent mind, which is against to the natural justice and fair play.

7. In such view of the matter, the order of punishment dated 17.02.2016, passed by the Director, SC/ST Welfare Department, Government of Bihar, Patna, as well as the communication dated 14.09.2016 are set aside.

8. As both the sides have accepted that proceeding should be initiated from the stage of second show-cause, which has already been served upon him and reply of the same has already been filed by the petitioner. The disciplinary authority without looking to the contents of approval or without being influenced by the approval of the appellate authority will decide the issue independently in accordance with law from the stage of second show-cause after examining the contents of reply of the second show-cause filed by the petitioner. If the disciplinary



authority passes the order against the petitioner, he will be at liberty to exhaust the remedy as available to him.

9. Though this Court has set aside the impugned order, but will not *ipso facto* make the petitioner entitled for reinstatement and back wages, which will only be subject to final outcome of the proceeding. The proceeding should be decided within a period of four months from the date of receipt/production of a copy of this order.

10. With the aforesaid observations and directions, this writ petition is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	12.07.2018
Transmission Date	N/A.

