

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1679 of 2017

In
Civil Writ Jurisdiction Case No.9622 of 2008

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1. The State of Bihar
 2. The Principal Chief Conservator of forest, Bishweshwaraiya Bhawan,
Bailey Road, Patna
 3. The Forest Conservator cum Regional Director, Balmiki Byadra
Pariyojana, West Champaran, Bettiah
 4. The Divisional Forest Officer cum Deputy Director, Byadh Yojna
Champaran, Region 1, Ram Nagar, Bettiah
 5. The Conducting Officer cum Conservator of Forest cum Regional Director
Walmiki Brah Yojna, Champaran, Bettiah

... .. Respondents/Appellants

Versus

1. Yashoda Devi wife of Late Devesh Chandra Dutta
2. Sanjay Kumar Dutta, son of Late Devesh Chandra Dutta
3. Ranjit Kumar Dutta, son of Late Devesh Chandra Duttadutta, all residents
of Village Khariyani, Via Pathargawa, P.S. Pathar Gawa, Distict Godda,
State Jharkhnd

... .. Petitioners/Respondents

Appearance :

For the Appellant/s : Mr. Dinesh Maharaj, A/C to AAG-11
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 16-08-2018

Re:I.A.No. 8796 of 2017

This interlocutory application has been filed for
condonation of delay of 203 days in filing the appeal.

A usual plea of procedural delay occasioning due to
file being processed at various levels has been assigned as a



reason for the delay caused in filing the appeal.

Having heard Mr. Dinesh Maharaj, learned AC to AAG-11 on the condonation application, we are of the opinion that even if his persuasive submission would allow us to consider the prayer for condonation, the facts leading to the nature of penalty imposed is so absurd and contrary to the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Disciplinary Rules, 2005') that we are satisfied to note that a condonation of delay would be an exercise in futility.

We note from the pleadings in the writ petition that of the four charges framed against the deceased petitioner, the disciplinary authority, though found three charges proved, but since the evidence on the 4th charge i.e. interpolation of record which was directly connected with the other charges, was not held proved that the original petitioner was given the benefit of doubt for being exonerated of all the charges. In other words, the charges were dropped. In normal circumstance and if the disciplinary authority would have proceeded as per the Rules, then there was nothing further to be done insofar as the disciplinary case is concerned. However, two serious mistakes were committed by the disciplinary authority while passing the



order of penalty on 20.02.2006, namely:

(a) The original petitioner having superannuated in the meanwhile on 29.02.2004, no penalty as envisaged under Rule 14 of 'the Disciplinary Rules, 2005' could have been imposed on him, however, the disciplinary authority or the State, as the case may be, could have imposed a penalty envisaged under the Bihar Pension Rules; and

(b) Even for the sake of assumption, if we would assume that the disciplinary authority was empowered to impose a penalty under 'the Disciplinary Rules, 2005', he certainly could not have travelled beyond the penalty as provided under Rule 14 of 'the Disciplinary Rules, 2005'.

In the present case, the disciplinary authority having exonerated the deceased petitioner of the charges, yet has passed an order of penalty that he would not be entitled to any salary for the suspension period, save and except what he has drawn by way of subsistence allowance. We note that Rule 14 of 'the Disciplinary Rules, 2005', does not conceive of any such punishment nor vests jurisdiction in the disciplinary authority to withhold the salary and allowances of a delinquent for the suspension period.

No doubt, there is an enabling power present under



Rule 11 of 'the Disciplinary Rules, 2005' with the disciplinary authority to pass appropriate order as regarding admissibility of pay and allowances on reinstatement of the original petitioner after revocation of suspension or on conclusion of the proceeding, but then this exercise is distinct from exercising disciplinary control, which may or may not culminate in an order of penalty as conceived under Rule 14 of 'the Disciplinary Rules, 2005'. In fact an exercise of jurisdiction by a disciplinary authority under Rule 11, Rule 12 or Rule 13 are consequential on a culmination of disciplinary proceeding and may be relatable thereto, but this exercise in no manner is a part of disciplinary exercise.

Our discussions above would confirm that the order of penalty was neither sustainable on jurisdiction since the petitioner had superannuated much prior to passing of the penalty order nor is the order of penalty sustainable on merits because Rule 14 of 'the Disciplinary Rules, 2005' does not empower the disciplinary authority to move beyond the punishments envisaged thereunder. Neither on the explanation thus given by the State for condonation of delay above, nor on the facts leading to this appeal, we are persuaded to grant indulgence in favour of the State.



In the result, I.A.No. 8796 of 2017 is rejected.

Consequently, the Letters Patent Appeal is dismissed.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	AFR
CAV DATE	N/A
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Transmission Date	

