IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.242 of 2018

In

Civil Writ Jurisdiction Case No.4905 of 2011

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Sushil Kumar, Son of Late Kailash Prasad, Resident of Mohalla- East Ashok Nagar, Road No.14, Kankarbagh, District- Patna, retired as Account Assistant, Bihar School Examination Board.

... ... Appellant/s

Versus

1. Bihar School Examination Board Through Chairman.
2. Secretary, Bihar School Examination Board, having its Office located at Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s :	Mr. Ashok Kumar Choudhary, Advocate Mr. Akshansh Ankit, Advocate
For the Respondent/s:	Mr. Lalit Kishore, Sr. Advocate Mr. Gyan Shankar, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 03-08-2018

Heard parties.

Judgment dated 19.01.2018 passed by learned Single Judge in C.W.J.C. No. 4905 of 2011 is under challenge in this appeal.

The appellant, while working as an Assistant in the Bihar School Examination Board, was posted in Accounts establishment where during the period December 1997 to May 1998, he had recommended the pay bill of one K.K. Mishra, who was engaged on contract basis to write certificates. Considering it financial irregularity, as according to the department the petitioner-appellant wrongly recommended payment to the aforesaid K.K. Mishra, who was never appointed as daily wager, a show cause notice was served upon him on 16.11.2000 as to why a departmental proceeding be not initiated against him. He was placed under suspension w.e.f. 17.11.2000 and was called upon to submit his reply to the charges failing which it was to be assumed that the petitioner has nothing to say in his defence. The Inquiry Officer was appointed to conduct the inquiry. The petitioner-appellant was to retire on 30.06.2002. Just before that, he was served with the order of minor punishment. One of the punishments was of stoppage of two annual increments without cumulative effect and the second was that, during the period of suspension, he would not be paid subsistence allowance. That order was challenged by filing the writ petition.

So far the first punishment is concerned, learned Single Judge has opined that there is no question of even serving the punishment for the reason that the petitioner-appellant retired merely two days after the punishment imposed and there was no question of increment falling due in the next year. Thus, in view of learned Single Judge, the challenge was of merely an academic in nature as the order would not be effectuated. So far the second punishment is concerned, it has been held after considering the decisions of the Apex Court that the petitioner-appellant has made challenge the aforesaid order after much delay, i.e., of about nine years after passing of the order. There was provision of appeal also which was never availed. Thus, on the ground of delay and laches the writ petition was dismissed by the learned Single Judge.

Mr. Ashok Kumar Chaudhary, learned counsel, has raised various grounds challenging the aforesaid judgment including one that a separate notice was not served for the purpose of imposing second punishment which was required under law. However, the same was not accepted by the learned Single Judge on the ground that the issues could have been raised by filing the appeal before a competent authority but after nine years of retirement, the writ petitioner-appellant has knocked the door of writ court.

In our considered view, even if it is assumed that there are two views possible in the matter and one has been taken by the learned Single Judge then it does not warrant interference in the impugned judgment in intra-court appeal. In our view also, there was no justified reason for filing a case after nine years. Accordingly, the judgment passed by the learned Single Judge cannot be faulted with.

In the result, this appeal is dismissed. However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Spd/-

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