

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.73 of 2018

In
Civil Writ Jurisdiction Case No.18525 of 2012

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Sarvjeet Kumar@Sarvjeet Kumar Son of Late Ram Karan Singh, Resident of Village-Sekhpura, P.S. Rampur, Chauram, District-Jehanabad Now Arbal At Present Resident of Village and P.S. Goh, District-Aurangabad.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The State of Bihar through the Principal Secretary, Water Resources Govt. of Bihar, Patna.
3. The Under Secretary, Department of Water Resources, Govt. of Bihar, Patna
4. The Chief Engineer, Department of Water Resources, District-Aurangabad.
5. The Superintending Engineer, Ganga Sone Flood Control, Anchal, Patna.
6. The Executive Engineer, Irrigation Sub-Division, Daud Nagar, Aurangabad.
7. The Executive Engineer, Sone Canal Division, Khagaul, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bachan Jee Ojha, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, A.A.G. 4
		Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-04-2019

Heard Shri Bachan Jee Ojha, learned counsel for the appellant and Shri Anjani Kumar, learned Additional Advocate General for the State.

This appeal has been filed by the son of the employee who is stated to be traceless. This appeal questions the correctness of the judgement dated 13th December, 2017, whereby the learned Single Judge has proceeded to dismiss the writ petition primarily on two grounds, firstly, that the dismissal



of the earlier writ petition i.e. C.W.J.C. No. 7424 of 2006 would operate as res judicata and, even otherwise, a mere acquittal in a criminal case, on the charges which are stated to be similar, will not automatically end up in the exoneration of an employee who has faced disciplinary proceedings on the basis thereof.

In the present case, certain facts are undisputed. The appellant's father was involved in a criminal case and was placed behind bars. In the disciplinary proceedings against him, five charges were framed, including one charge to the effect that a recovery and realization of Rs. 2,64,000/- had been made during the financial year 1992-93 out of which Rs. 1,64,000/- had been only deposited and Rs. 1,00,000/- stood embezzled. The employee was, therefore, called upon to give a reply to the said charge-sheet.

After the conclusion of the disciplinary proceedings, the services of the delinquent were dismissed. He filed an appeal and the appeal was also dismissed, whereafter he filed C.W.J.C. No. 7424 of 2006. The same was dismissed on 22nd April, 2008, by the following order:

“Heard learned counsel for the petitioner and the State.

The petitioner was terminated from service on 18.1.1996. The appellate authority upheld the order of termination on



03.06.1998 which was communicated to the petitioner on 05.06.1998. The writ petition has then been filed on 22.06.2006.

In the entire pleadings in the writ petition, there is no whisper of any suggestion with regard to any explanation for this delay. In the rejoinder to the counter affidavit, there is a half hearted attempt by pleading that the financial condition of the petitioner is very critical and due to the non-payment of subsistence allowance he was unable to face the departmental enquiry. What may have happened during the departmental enquiry is an entirely different matter. The question of delay in this case has arisen post the conclusion of the departmental enquiry.

The writ petition is barred by gross unexplained delay and laches. Service matters have an urgency for promptitude in pursuing for relief. Termination leads to appointment on arising vacancy. On appointments are based claims of seniority. To entertain this application, at this belated stage, shall have a cascading effect.

The writ application is dismissed on the ground of delay and laches.”

In the criminal proceedings, the delinquent came to be convicted vide judgement dated 27th March, 2006, against which he filed Criminal Revision No. 1918 of 2009. The said revision was allowed on 19th January, 2012 and, accordingly, the



conviction order, as upheld by the judgement in appeal dated 19.11.2009, was set aside and the appellant was acquitted by the High Court.

It is after his acquittal, the employee filed the writ petition giving rise to the present controversy contending that since the appellant has been acquitted on the basis of the same charges relating to embezzlement, the relief prayed for may be to issue a writ of mandamus to make payment of salary to the appellant as also his consequential benefits of pension and other retiral dues.

The learned Single Judge came to the conclusion as recorded above that the second writ petition would be barred by the principles of res judicata and, secondly, the acquittal order should be taken into account for reinstating the appellant and for giving him all consequential benefits as it was grounded on the same set of charges.

Learned counsel for the appellant has taken us through the pleadings of the writ petition to contend that the entire disciplinary proceedings stand vitiated on account of the procedure and is also hit by the doctrine of proportionality. Learned counsel for the appellant may be right in his submission that the order of the disciplinary authority dated 18.01.1996 did



not record sufficient or cogent reasons for arriving at the conclusion for imposing the punishment and it may be a short and cryptic order, but at the same time, the appellate order in detail records the entire procedure followed after submission of the charge-sheet and after giving adequate opportunity to the appellant. Learned counsel submits that the proceedings went ex parte which aspect does not appear to have been dealt with appropriately.

We have seen the appellate order and we find clear recitals of facing difficulty by the enquiry officer whereafter the enquiry report was submitted and a second show-cause notice was given to the employee, whereafter the punishment was imposed. This would have been done only to satisfy the respondents, otherwise the order of dismissal had attained the finality with the dismissal of the earlier writ petition on 22nd April, 2008. It is admitted that no challenge was raised assailing the judgement dated 22nd April, 2008.

In the said circumstances, it will not be proper for us to sit in appeal over the correctness or otherwise of the said judgement even though we may not agree with the reasonings given therein. The employee having failed to avail of any opportunity of questioning the correctness of the said judgement



cannot be permitted now to reopen the entire issue.

Apart from this, the main argument of the learned counsel for the appellant is that once he has been acquitted in the criminal case, he ought to have been given its benefit. We find that the criminal case ended in an acquittal from the High Court in a criminal revision where it was recorded that the evidence of the prosecution witnesses did not inspire confidence and, therefore, in the absence of any incriminating evidence, perceivably, the accused was entitled to the benefit of doubt. The conviction was, therefore, set aside and he was acquitted.

Having perused the said judgement, we are of the opinion that even if some of the witnesses were common in the disciplinary proceedings, their deposition before the enquiry officer cannot be said to be suffering from any infirmity as the appellant did not choose to contest the same and he concentrated on the criminal case where he was ultimately convicted and his appeal had also been dismissed. It was only in the revision petition that the impugned judgements were set aside.

We, therefore, do not find this to be a valid reason to ignore the judgements which have become final and then to grant a relief of mandamus, as prayed for in a subsequently instituted writ petition.



We, therefore, do not find any error, muchless a legal error so as to warrant interference in this appeal which lacks merit. The same is accordingly rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.04.2019
Transmission Date	N/A

