

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No. 3 of 2018

Arising out of

Civil Writ Jurisdiction Case No. 610 of 2017

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Ashwini Kumar Son of Late Jagdish Prasad resident of Mohalla - Shivpuri, P.S. Hazaribagh, District Hazaribagh (Jharkhand) at present resident of Flat No. 301, Devlok Apartment, New Patliputra Colony, Patna - 800013, P.S. Patliputra, District - Patna (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sri Anjani Kumar Singh, the Chief Secretary, Government of Bihar, Patna.
3. Sri Amir Subhani, the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna-4.
4. Sri Aditya Kumar Das, the Commissioner (Excise)-cum-Inspector General of Registration, Registration, Excise and Prohibition Department, Government of Bihar, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Chandra and Mr. Ranjeet Kumar, Advocates
For the State	:	Mr. Lalit Kishore, Sr. Advocate Mr. Pawan Kumar, AC to AG

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 13-09-2019

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

2. Pursuant to order dated 28.08.2019, the Excise Commissioner, Government of Bihar, Patna is present and has filed 3rd supplementary show cause. The reason why the officer was called is recorded in order dated 28.08.2019.



3. The petitioner has moved the Court alleging willful and deliberate non compliance of the order dated 09.05.2017 passed in CWJC No. 610 of 2017. The writ petition was disposed off in the following terms:

“The order of the disciplinary authority is non-speaking and proceeds to uphold the guilt mechanically without discussing the defence led by the petitioner and as I have observed, without dealing with the issue raised. The entire proceedings questioned in the writ petition is a bundle of illegalities and cannot be upheld and in consequence, the entire proceedings including the chargesheet, the enquiry report together with the impugned order of dismissal bearing memo No.3038 dated 28.6.2016 passed by the State Government in its Registration, Excise and Prohibition Department impugned at Annexure-28 cannot be upheld and are accordingly quashed and set aside. The petitioner is reinstated with full consequential benefits.”

4. Learned counsel for the petitioner submitted that even though the Court had quashed the dismissal order dated 28.06.2016, with full consequential benefits, still the salary for the period he was under suspension has not been paid which is directly in the teeth of the order.

5. Learned Advocate General produced before the Court copy of order dated 11.10.2018 passed in LPA No. 1123 of 2017 and submitted that the said appeal was directed against the order of the writ Court dated 09.05.2017 passed in CWJC No. 610 of 2017 and the Court had partly allowed the appeal of the State by



modifying the writ Court order to the extent that the State was given liberty to hold a fresh *de novo* enquiry in accordance with law and the rules on the same charge. It was submitted that once the Court had given such liberty to the authorities to hold a fresh *de novo* enquiry in accordance with law and the rules on the same charge, the authorities exercising power under Rule 9(5) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules'), which provides that the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of original order of dismissal, have initiated such *de novo* enquiry by order dated 28.06.2019 and by the same order he has also been placed under suspension in terms of the aforesaid Rules.

6. It was submitted that with regard to all other dues, including subsistence allowance, the same have been paid up-to-date to the petitioner.

7. At this stage the Court deems it appropriate to reproduce paragraph no. 8 of LPA No. 1123 of 2017, which reads as under:

“8. In view of the above and for the reasons stated above, we modify the impugned judgment and order passed by the learned Single Judge to the extent to reserve liberty in favour of the appellant-State to hold a fresh de novo enquiry in accordance with law and the rules on the same



charge. The present Letters Patent Appeal is partly allowed to the aforesaid extent.”

8. Having considered the matter, the Court finds that the Division Bench in LPA No. 1123 of 2017, having modified the writ Court order by granting liberty to the authorities to hold a fresh *de novo* enquiry, in accordance with law and the Rules on the same charge and the Rules providing for deemed suspension of the delinquent by the Appointing Authority from the date of original order of dismissal, the action of the authorities cannot be held to be deliberate or willful violation of the order of the writ Court dated 09.05.2017 passed in CWJC No. 610 of 2017.

9. In view thereof, the application stands disposed off.

10. Personal appearance of the officer stands dispensed with.

(Ahsanuddin Amanullah, J.)

P. Kumar

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