

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1323 of 2018

In
Civil Writ Jurisdiction Case No.4701 of 2014

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1. The State of Bihar
 2. The Principal Secretary, Revenue and Land Reforms, Govt. of Bihar, At Old Secretariat, P.S. Secretariat, P.S. Secretariat, District-Patna.
 3. The Commissioner Saran Division, Chapra.
 4. The Collector, Chapra.

... .. Respondent-Appellant/s

Versus

Shailesh Kumar Ojha, son of Sri Parmanand Ojha, R/o Village-Kumhailla,
P.S. Ishwapur, District-Saran at Chapra.

... .. Petitioner-Respondent/s

Appearance :

For the Appellant/s : Mrs.Nutan Sahay, AC TO AAG 12
For the Respondent/s : Dr. Anshuman, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-07-2019

Re: Interlocutory Application No.01 of 2018.

Having heard learned counsel for the appellants, we are satisfied that the grounds taken for condoning the delay, even though not very satisfactory, are disclosed sufficient reasons for condoning the delay.

The Interlocutory Application is allowed and the appeal shall be treated within time.

Re: Letters Patent Appeal No. 1323 of 2018

We had heard the matter on 13.05.2019 and had



passed the following order:-

“Learned counsel for the State may inform the Court as to the outcome of the settlements and their existence or being reversed by any higher authority on the ground of may be contrary to the official policy of the Government as declared in the letter dated 22.11.1995. This fact is necessary to be examined for the purpose of understanding as to whether the charge against the respondent-petitioner if based on such allegations can be sustained even if the settlement orders have not been reversed.

List on 15th July, 2019”.

Affidavits have been exchanged thereafter and we have heard the learned counsel for the parties at length.

The issue raised in the writ petition giving rise to this appeal was similar to other cases in relation to dismissal of officers from service on account of certain alleged irregularities having been committed in the disposal of applications for settlement of land for cultivation of tea gardens.

The respondent-petitioner herein was a Circle Inspector, who was also charge-sheeted for the same and was ultimately dismissed from service. He questioned the dismissal order and the writ petition has been allowed by a learned Single



Judge and the order of dismissal has been quashed.

After we had heard the matter on the earlier occasion, we had pointed out to the learned counsel for the State to assist us keeping in view the judgement in L.P.A.No.245 of 2018 (The State of Bihar & Ors. Versus Ragunandan Jha) decided on 22nd January, 2019 and LPA No.1619 of 2017 (The State of Bihar & Ors. Vs. Dr. Fateh Faiyaz & Anr) decided on 20th March, 2018, where also similar appeals filed by the State of Bihar were dismissed.

Mrs. Nutan Sahay, learned counsel for the State has pointed out that in the judgement in L.P.A. No.245 of 2018 (The State of Bihar & Ors. Versus Ragunandan Jha) decided on 22nd January, 2019, the Division Bench had noted that there was nothing on record to indicate that any appeal was filed against the judgement in the case of Shailesh Kumar Ojha which is the present case. She submits that this appeal had already been filed, but it appears that the same was not brought to the notice of the Court then.

Nonetheless, we have considered the submissions raised and what we find is that the judgement in the case of State of Bihar & Ors. Versus Dr. Fateh Faiyaz & anr (LPA No.1619 of 2017) decided on 20th March, 2018 has become



final. The same has not been questioned either before a higher forum and the benefits have been extended to the respondent petitioner therein. The judgement in the said case is extracted hereinunder:-

“There is a delay of 88 days in filing this appeal. I.A. No. 144 of 2018 has been filed for condonation of the delay in preferring the appeal. Considering the facts and circumstances and in view of submission made in support thereof, this application is allowed. The delay in filing the appeal is condoned.

This appeal has been filed by the State Government seeking exception to an order dated 25/07/2017 passed by the learned Writ Court in CWJC No. 15658 of 2016. Having heard learned counsel for the parties we find that in the matter of a disciplinary action against the writ petitioner-respondent no. 1 under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and imposing upon him certain punishment of censure and reduction in pay by five stages the learned Writ Court has gone into various aspects of the matter and in place of allegation of misconduct in the facts and circumstances of the case has found that the acts alleged to be misconduct does not fall within the purview of an act of misconduct. It may be an act of negligence or carelessness in dealing with the matter and placing reliance upon the law



laid down by the Supreme Court in the case of *Union of India vs. J Ahmad [(1979) 2 SCC 286]* and in the case of *State of Punjab vs. Ram Singh (AIR 1992 SC 2188)* the learned Writ Court has held that for an isolated case of negligence the imposition of punishment is not sustainable.

In our considered view, the learned Writ Court has not committed any error in doing so. We see no reason to make any indulgence into the matter. The appeal is accordingly dismissed.”

Following the said judgement, this Bench had also dismissed the appeal of the State of Bihar & Ors. Versus Raghunandan Jha (L.P.A.No.245 of 2018) decided on 22.01.2019 which is extracted hereinunder:-

Re: I.A. No. 1352 of 2018

Heard Shri Ajay, learned counsel for the appellant-State of Bihar.

2. The appeal is reported to be delayed by 58 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 1352 of 2018 stands allowed accordingly.

Re: L.P.A. No. 245 of 2018



It has been vehemently urged that the learned Single Judge has wrongly applied the ratio of the decisions in the case of **Dr. Fateh Faiyaz Vs. The State of Bihar & Ors.** (C.W.J.C. No. 15658 of 2016) decided on 25.07.2017 and the judgment in the case of **Shailesh Kumar Ojha Vs. The State of Bihar & Ors.** (C.W.J.C. No. 4701 of 2014) decided on 09.10.2017 inasmuch as their cases were different and distinguishable keeping in view the nature of the charges that were levelled against them.

2. Learned counsel for the appellants submits that in the present case the respondent-petitioner Raghunandan Jha was the Circle Officer and he was the first initial authority who had made the recommendations for the purpose of settlement in spite of fact that the land for which the proposal was made was not free from encumbrances and was rather settled through receipts in favour of tenure-holders. The contention, therefore, in short is that the very recommendation made by the respondent-petitioner proceeded on an incorrect fact fed by him resulting in wrong decisions by the higher authorities.

3. It is further submitted that the respondent-petitioner has been found guilty of the charges by the Inquiry Officer, yet the learned Single Judge has proceeded to quash the entire proceedings including the punishment meted out



to him which was neither selective nor discriminatory and was based on the material that was found against the delinquent employee during the inquiry proceedings. It is, therefore, submitted that the Disciplinary Authority has rightly proceeded to accept the recommendation of the Inquiry Officer to impose the punishment of compulsory retirement.

4. Learned counsel for the respondent-petitioner, however, submits that the entire episode was with regard to allotment of land where the issue was not of an individual responsibility but of the collective responsibility of all involved and so far as the respondent-petitioner is concerned, he had simply acted as per the directions of the higher authorities. Learned counsel submits that all facts pertaining to the recommendations were on record and they were well within the knowledge of the approving authorities including the Additional Collector and the Collector and, therefore, to fix the responsibility on the answering respondent was by itself an erroneous charge on the basis whereof misconduct was being alleged on the part of the respondent-petitioner. Learned counsel submits that even the Inquiry Officer had not found the answering respondent to be guilty of all the charges and had simply drawn vague inferences without there being any material on record to establish the charges against the answering



respondent. The contention, therefore, is that the learned Single Judge was justified in allowing the writ petition of the answering respondent keeping in view the fact that others connected with it had been extended the similar relief.

5. Having considered the submissions raised at the Bar, we find that the learned Single Judge had relied on the decision in the case of **Dr. Fateh Faiyaz** (supra) and that of **Shailesh Kumar Ojha** (supra). It has been brought to our notice that the learned Single Judge in the case of **Dr. Fateh Faiyaz** (supra) while allowing the writ petition had made the following observations extracted hereinunder:-

“While in the case which was put up for consideration before the Supreme Court, the advisory was issued in context with selective imposition of punishment, the case in hand is on a worse pedestal because while the superiors have been let off for their position in the State Government, the junior most officer has been punished even when he is simply a proposer to the settlement and not responsible for the final decision taken thereon. While the decision makers have been let of, the petitioner has been visited with punishment for a simple error of judgment.”

6. The aforesaid judgment went up in appeal and that after having noticed the contention of the appellant-State of Bihar the appeal in the case of Dr. Fateh Faiyaz being L.P.A. No. 1619 of



2017 was dismissed on 20th March, 2018 by the following judgment extracted hereinunder:-

“There is a delay of 88 days in filing this appeal. I.A. No. 144 of 2018 has been filed for condonation of the delay in preferring the appeal. Considering the facts and circumstances and in view of submission made in support thereof, this application is allowed. The delay in filing the appeal is condoned.

This appeal has been filed by the State Government seeking exception to an order dated 25/07/2017 passed by the learned Writ Court in CWJC No. 15658 of 2016. Having heard learned counsel for the parties we find that in the matter of a disciplinary action against the writ petitioner-respondent no. 1 under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and imposing upon him certain punishment of censure and reduction in pay by five stages the learned Writ Court has gone into various aspects of the matter and in place of allegation of misconduct in the facts and circumstances of the case has found that the acts alleged to be misconduct does not fall within the purview of an act of misconduct. It may be an act of negligence or carelessness in dealing with the matter and placing reliance upon the law laid down by the Supreme Court in the case of *Union of India vs. J Ahmad [(1979) 2 SCC 286]* and in the case of *State of Punjab vs. Ram Singh (AIR 1992 SC 2188)* the learned Writ Court has held that for an isolated case of negligence the imposition of punishment is not sustainable.

In our considered view, the



learned Writ Court has not committed any error in doing so. We see no reason to make any indulgence into the matter. The appeal is accordingly dismissed.”

7. The case of Shailesh Kumar Ojha was also considered by another Hon’ble Single Judge who vide judgment dated 9th October, 2017 passed in C.W.J.C. No. 4701 of 2014 set aside the punishment order. There is nothing on record to indicate that any appeal was filed against the judgment in the case of Shailesh Kumar Ojha (supra). Consequently, the aforesaid two decisions in respect of the aforesaid two officials have become final and, therefore, the learned Single Judge, in our opinion, did not commit any error in relying on the said judgments.

8. What is noticeable is that the learned Single Judge in the case of Dr. Fateh Faiyaz had made a clear observation in relation to the lower officials which is evident from the passage extracted hereinabove. This includes the respondent-petitioner. Apart from this, the contention that the respondent-petitioner was the initial proposer on whose recommendations the illegal allotments had been made, suffice it to say that the proposal if was erroneous was subject to scrutiny by a twin layer of higher officials whereafter the allotments could have been made and finalized. In such circumstances, there ought



to have been evidence for indicting the respondent-petitioner which does not appear to have been established during the inquiry proceedings. The partial acceptance of the charges by the Inquiry Officer was, therefore, a half hearted approach and it appears that the respondent-petitioner was made a scapegoat in order to save the involvement of the higher officials as observed by the learned Single Judge in the case of **Dr. Fateh Faiyaz** (supra). We, therefore, entirely agree with the aforesaid observations which apply on the facts of the present case as well.

9. Consequently, we do not find any merit in this appeal, which is accordingly rejected.”

The said judgement has also become final. We see no reason to differ from the view already taken therein and since there is nothing on record to indicate that the proceedings undertaken at the time of settlement have either been reversed or modified till date even though the matter is reported to be still sub-judice as stated by the learned counsel, there is no reason not to extend the same benefit to the respondent-petitioner as has been extended by the learned Judges in the aforesaid two cases. This would be more appropriate in view of the fact that the judgement in the case of the State of Bihar & Ors. Versus Dr.



Fateh Faiyaz & Anr. (LPA No.1619 of 2017) decided on 20th March, 2018 and that in the case of Raghunandan Jha (supra) has been allowed to become final without any challenge having been raised thereto. The case of the respondent-petitioner stands on a similar footing and therefore this appeal cannot be entertained and it is accordingly dismissed for the same reason.

The respondent-petitioner had been permitted to join as stated at the Bar after the judgement of the learned Single Judge, but had not been paid his salary and he has also attained the age of superannuation on 31st August, 2018. The appellants shall proceed to consider and pass appropriate orders with regard to such claim of the respondent-petitioner in accordance with law, preferably within a period of three months.

Dismissed with the said observations.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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CAV DATE	
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