

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1848 of 2017

In

Civil Writ Jurisdiction Case No.8907 of 2014

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Munna Singh Son of Sri Daya Shankar Singh, Resident of Village-
Ishwarpura, P.S.- Sahpur, District- Bhojpur, at the relevant time posted as
Clerk Child Development Project Officer, Chand, District- Kaimur.

... .. Appellant/s

Versus

1. The State Of Bihar through the Secretary
2. The Secretary, Social Welfare Department, Bihar, Patna.
3. The Director, Social Welfare Department, Integrated Child Development
Service (ICDS), Directorate, Bihar
4. The District Magistrate, Patna.
5. The Deputy Collector, Patna Collectorate, Patna.
6. The District Programme Officer, Social Welfare Department, Patna.
7. The District Programme Officer, Social Welfare Department, Kaimur.
8. The Child Development Project Officer, Patna Sadar-3, Patna.
9. The Chief Development Project Officer, Chand, Kaimur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Dudh Nath Singh, Advocate
For the Respondent/s : Mr.Kaushal Kumar Jha- AAG-8
Mr. Mritunjay Kumar, AC to AAG

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 09-12-2019

Heard learned counsel for the appellant and learned
counsel for the State.



2. This Letters Patent Appeal has been preferred against impugned judgment dated 25.08.2017 passed by learned Single Judge in CWJC No. 8907 of 2014 which was filed by the appellant (writ petitioner) for quashing the order of Director, Integrated Child Development Service (ICDS), Social Welfare Department, Patna and also for quashing of the order dated 19.11.2014 contained in Sanchika No. ICDS/10051/2011 passed by the appellate authority, the Secretary, Social Welfare Department, Patna by which the order of withholding the increment with non-cumulative effect of the appellant, was affirmed.

3. The appellant was working as Clerk in Social Welfare Department under Child Development Project Officer and on surprise inspection by the Minister of the concerned department, certain irregularities were found for which *prima facie* petitioner was found guilty and, accordingly, a departmental proceeding was initiated against him. The appellant faced several charges, but he was found guilty only for two charges, whereas he was acquitted of the remaining charges. However, after adopting proper procedure, the second show-cause was issued to the appellant and, thereafter, after taking his reply the punishment was awarded to him and, accordingly, he



was put at the bottom of his scale for four years with non-cumulative effect.

4. Learned counsel of the appellant submits that at the time of surprise inspection by the Minister, the appellant was only Clerk in his office, and, he was handling the entire work of the said office. As a matter of fact, he was overburdened. He further submits that only two charges i.e. non-production of logbook and non-entry in some registers were found true and for that the appellant was made responsible. He further submits that even if, the aforesaid fact assumed to be true, then also, the aforesaid act of the petitioner will not come under the definition of mis-conduct. In support of his contention, he referred decisions reported in **2007(4) SCC 566 and 2012(4) SCC 407**. He further submits that for *bona fide* negligence of the appellant, the department awarded major penalty to the appellant which is not proportionate to the act committed by the appellant and at best the appellant could have been punished with minor penalties as mentioned in section 14(1) of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. He further submits that the appellant is a poor Clerk and if this court affirms the punishment awarded to the appellant, the appellant shall suffer a lot and, therefore, in the



aforesaid facts and circumstance, the order of learned Single Judge as well as order of concerned authorities are required to be set aside.

5. On the other hand, learned counsel appearing for the State refuted the above-stated submissions and submitted that the concerned authorities as well as learned Single Judge rightly passed the orders and, there is no need to interfere into the orders passed by the learned Single Judge as well as the concerned authorities. He further submits that it would not proper for this appellate court to enter into facts of the case.

6. It is admitted position that the appellant faced departmental proceeding and he was found guilty of two charges which have already been stated in this order and the appellant was punished with reduction to a lower stage in the time scale for a period of four years without cumulative effect. Section 14 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 describes the minor and major penalties and the concerned authorities have right to award minor or major penalties to a delinquent government employee in proportion to the act committed by delinquent employee, but before awarding penalties, the concerned authorities must keep in mind the nature of allegation levelled against delinquent



employee. In the present case, it appears that the concerned authorities have given major penalty to the appellant for the act of negligence. The appellant explained before the concerned authorities that he was overburdened with work and he was handling the work of two persons at the relevant time. Furthermore, we find that only fault of the appellant was that he could not produce the logbooks at the time of surprise inspection and failed to make entries in some relevant registers. Furthermore, we find that the appellant was charged for defalcation of the government amount, but the aforesaid charge was not found true and, therefore, even if, it is taken into consideration that the appellant had been working negligently then also, in our view, it was not proper to award major penalty to the appellant by the concerned authorities. Therefore, we are of the view that the concerned authorities should have awarded minor penalty to him and, accordingly, considering the above-stated facts and circumstances as well as nature of charges and finding of Enquiry Officer, this writ petition stands disposed of, modifying the penalty of the appellant to this effect that he shall be put to a lower stage in the time scale, but only for a period of three years without cumulative effect.

7. In the aforesaid manner, the impugned judgment



stands modified.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

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AFR/NAFR	AFR
CAV DATE	NA
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