

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.245 of 2018**

**In**

**Civil Writ Jurisdiction Case No.10098 of 2014**

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1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Old Secretariat Building, Patna
  2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
  3. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna
  4. The Additional Secretary, General Administrative Department, Govt. of Bihar, Patna
  5. The District Magistrate, Aurangabad.

... .. Appellant/s

Versus

Raghunandan Jha, Bihar Administrative Services, S/o Late Suresh Jha,  
Resident of Village + P.O. Dibra, P.S. B. Kothi, District - Purnea

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s  | : | Mr. Ajay, G.A. 5                   |
| For the Respondent/s | : | Mr. Chitranjan Sinha, Sr. Advocate |
|                      |   | Dr. Anshuman, Advocate             |
|                      |   | Mr. Sanjay Kumar, Advocate         |
|                      |   | Mr. Kuber Pathak, Advocate         |
|                      |   | Mr. Baban Kumar, Advocate          |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 22-01-2019**

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 20<sup>th</sup> 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 9<sup>th</sup> 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.

**(Amreshwar Pratap Sahi, CJ)**

**(Anjana Mishra, J)**

P.K.P./-Jagdish

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