

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1635 of 2018

In
Civil Writ Jurisdiction Case No.470 of 2018

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1. The State of Bihar through the Principal Secretary, Home (Police) Department, Government of Bihar, Patna
 2. The District General-cum- Inspector General of Police, Bihar, Patna.
 3. The Zonal Inspector General of Police, Patna Zone, Patna.
 4. The Deputy Inspector General of Police Sahabad Range at Dehri-on- Sone, Rohtas.
 5. The Superintendent of Police, Buxar.
 6. The Sub-Divisional Police Officer, Buxar.
 7. The Inspector cum Officer-in- Charge, Buxar Town Police Station, Buxar.

... .. Appellant/s

Versus

Dharmendra Kumar, son of Late Ram Pravesh Singh, Resident of Village- Masad, Police Station- Udwant Nagar, District- Bhojpur, Pin- 802162 Dismissed Sub Inspector of Police, Bihar Police).

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sheo Shankar Prasad, S.C. 8
For the Respondent/s	:	Dr. Mayanand Jha, Advocate
		Mr. Uday Kumar, Advocate

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

Date : 15-04-2019

Re: I.A. No. 8634 of 2018

Heard Shri Sheo Shankar Prasad, learned Standing
Counsel No. 8 for the appellant State of Bihar and Shri
Mayanand Jha, learned counsel for the respondent-petitioner.

2. The appeal is reported to be delayed by 102
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. 8634 of 2018 stands allowed accordingly.

Re: L.P.A. No. 1635 of 2018

The writ petition has been filed by the respondent-petitioner challenging his termination order from the post of Sub Inspector of Police. The learned Single Judge has allowed the writ petition on the ground that the Inquiry proceedings preceding the termination are clearly vitiated, inasmuch as, the Inquiry Officer himself became the Presenting Officer, the memo of charge had not been issued by the Disciplinary Authority, the recommendations of the Superintendent of Police have been made the basis of punishment, and last but not the least, the main witness to the allegation in support of the charge, who is said to have actually tendered a bribe to the respondent petitioner, was neither produced nor examined.

2. Learned counsel for the appellant State submits that the learned Single Judge committed an error in setting aside



the order and further directing the reinstatement with consequential benefits, inasmuch as, this was a case arising out of disciplinary proceedings where the charge was of accepting illegal gratification and consequently, in view of the law laid down in the case of **Union of India Vs. Y.S. Sandhu**, reported in **A.I.R. 2009 Supreme Court 161**, the reinstatement should not have been directed as a matter of course and it should have been left open to the Disciplinary Authority to proceed afresh in order to rectify the error in the procedure if any. The contention, therefore, is that in view of the material available on record and the allegations, the inquiry procedure had not been vitiated and the respondent had failed to point out any prejudice arising out of the said proceedings, consequently, the writ petition ought to have been dismissed, yet the learned Single Judge, relying on certain decisions, has proceeded to hold that the inquiry proceedings are vitiated.

3. We have considered the submissions raised and on the facts of the present case, we find a thoroughly negligent approach in the inquiry proceedings having been adopted by not appointing a Presenting Officer and not producing the prime witness who could have substantiated the charge relating to the alleged tendering and acceptance of illegal gratification.



4. The learned Standing Counsel for the appellant, however, contends that there was a confession on the part of the respondent petitioner. Such a confession is clearly denied and the same could not have been made the basis once the allegation was that the respondent-petitioner had accepted a bribe from one Rajendra Prasad Verma for letting him off, having found him indulging in gambling. In our considered opinion, in such circumstances, when there was evidence available according to the appellants, then there is no reason as to why the said evidence was not adduced during the inquiry proceedings in order to substantiate the charge of acceptance of any illegal gratification by the respondent petitioner. There is no admission of the respondent petitioner that amounts to a confession during enquiry.

5. In our considered opinion, the findings recorded by the learned Single Judge do not suffer from any infirmity.

6. So far as the issue of reinstatement is concerned, if the entire inquiry proceedings are vitiated from stage one itself, and if the basis of the passing of the order was on an opinion expressed by the Superintendent of Police, then in that event, inquiry does not appear to have been held fairly and this has caused prejudice to the respondent-petitioner. We, therefore,



entirely agree with the findings recorded by the learned Single Judge and in such circumstances it is desirable that the respondent-petitioner deserves to be reinstated. The judgment relied on by the learned counsel for the appellant in the case of **Union of India Vs. Y.S. Sandhu** (supra), therefore, does not come to the aid of the appellant on the facts of the present case.

7. We, accordingly, do not find any merit in the present appeal, which is, accordingly, dismissed without prejudice to the rights of the appellants to hold an inquiry from the stage it stands vitiated.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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CAV DATE	
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