

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1383 of 2018

In
Civil Writ Jurisdiction Case No.517 of 2015

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Upendra Singh

... .. Appellant/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Prabhat Kumar Singh
Mr. Surendra Kumar Singh

For the Respondent/s : Mr. Mankeshwar Jawari AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)

3 14-01-2020 Heard learned counsel appearing for the appellant as well as learned counsel appearing for the State.

This appeal has been listed under the heading for orders on petition and, accordingly, I.A.No7474 of 2018, which has been filed on behalf of the appellant under section 5 of the Limitation Act for condonation of delay of one year 279 days in filing this appeal, has been placed before this Bench for consideration.

However, from perusal of the impugned order, we find that the appellant preferred CWJC No. 517 of 2015 questioning the order bearing memo no. 825 dated 11.02.2009



passed by the Superintendent of Police , Muzaffarpur by which petitioner was dismissed from service. Furthermore, the impugned order goes to show that the petitioner was working as constable but he was made accused in Bettiah Town P.S.Case No. 129 of 2001 registered for the offences punishable under section 147, 148, 149, 323, 371, 436, 452 of the Indian Penal Code and under various provisions of Scheduled Casts and Scheduled Tribes(Prevention of Atrocities) Act 1989 and section 27 of the Arms Act. Furthermore, it would appear from perusal of impugned order that a departmental proceeding was initiated against the appellant and he was charged on two grounds:- first, he was accused in a criminal case and, second, he was found absent unauthorizedly. The competent authority held guilty to the appellant on both the above stated charges and, accordingly, he was dismissed from service.

The appellant challenged the order of Disciplinary Authority before this court by filing CWJC No. 7027 of 2010 which was dismissed on 24.10.2011 holding the dismissal order of the appellant valid. The appellant never challenged the order dated 24.10.2011 passed in CWJC No. 7027 of 2010.

However, the appellant faced trial in Bettiah P.S.Case No. 129 of 2001 and he was acquitted of the charges.



Thereafter, he again preferred CWJC No. 517 of 2015 challenging his dismissal order which was dismissed by the learned Single Judge passing impugned order dated 15.11.2016 on two grounds;- First, the judgment and order passed in CWJC No. 7027 of 2010 has already attained finality and second, the dismissal order of the appellant was not only resting on the criminal case rather unauthorized absence of the appellant was also taken into consideration while passing the order of dismissal.

Learned counsel appearing for the appellant would submit that it is an admitted position that the appellant was acquitted of the charges framed in Bettiah P.S.Case No. 129 of 2001 in the year 2012 and at the time of passing order dated 24.10.2011 in CWJC No. 7027 of 2010, there was no order of acquittal in favour of the appellant. He would further submit that the appellant has sought relief on the basis of subsequent events but the learned Single Judge failed to take note of the aforesaid fact. His, next, submission is that no doubt, the appellant was found absent for certain period but as a matter of fact, the appellant was made accused in Bettiah P.S.Case No. 129 of 2001 and that was the reason, he could not attend his duty as he was engaged in seeking bail in the above stated case



and, therefore, the aforesaid fact clearly indicates that absence of the appellant from his duty was not intentional rather he was compelled by the circumstances, as a result of which, he could not attend his duty.

Learned counsel for the appellant would further submit that no doubt, there is long delay in filing this appeal but as a matter of fact, the appellant could not file the appeal within time as he was engaged in the treatment of his wife and there was financial crunch which prevented the appellant to file the appeal within the period of limitation.

On the other hand, learned counsel appearing for the state refuted the above stated submissions arguing that admittedly, the appellant was dismissed from service when the charges in departmental proceeding were proved against him. He further submits that even if, it assumed that the charge of criminal prosecution fails due to subsequent event, then also, the appellant cannot escape from the charge framed against him for his unauthorized absence from his duty.

Learned counsel for the state, further, submits that this court while exercising the appellate jurisdiction cannot disturb the findings given by the learned Single Judge as well as competent authority in departmental proceeding without any



valid reason.

Learned counsel for the State submits that there is inordinate delay in filing this appeal and no sufficient reason has been given by the appellant.

Admittedly, there is delay of one year 279 days in filing this appeal and very vague stand for condoning the delay has been taken by the appellant. Moreover, we feel that even if, the delay is condoned, there is no scope to disturb the finding recorded by the learned Single Judge while passing the impugned judgment. Therefore, in the aforesaid circumstance, I.A.No. 7474 of 2018 is rejected and as a result of which this appeal stands dismissed being time barred.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

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