

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1145 of 2019

In

Civil Writ Jurisdiction Case No.19322 of 2018

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Birendra Kumar Sinha son of Late Sridhar Narayan Resident of Flat No. 208,
Vrindavan Garden Apartment, Ramnagari More, Ashiyana Road, P.O.-
Ashiyana Nagar, P.S.- Shastrinagar, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Additional Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Joint Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Joint Secretary (Abhiyantran), Water Resources Department, Government of Bihar, Patna.
6. The Deputy Secretary (Management), Water Resources Department, Government of Bihar, Patna.
7. The Engineer in Chief (North), Water Resources Department, Government of Bihar, Patna.
8. The Chief Engineer, Planning and Monitoring, Water Resources Department, Government of Bihar, Patna.
9. The Chief Engineer, Water Resources Department, Valmiki Nagar, West Champaran.
10. The Principal Secretary, Vigilance Department, Government of Bihar.
11. The Engineer-in- Chief Technical Examination Cell Vigilance Department Cell, Bairak No. 3, Main Secretariat, Patna.
12. The Superintending Engineer, Vigilance Department, Technical Examination Cell, Bairak No. 3, Main Secretariat, Patna.
13. The Bihar Public Service Commission through its Secretary, Patna.
14. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Amaresh Kumar Sinha, Advocate
For the A.G.	:	Mr. Ranjan Kumar Advocate
For the BPSC	:	Mr. Sanjay Pandey, Advocate
For the Respondent/s	:	Mr.Anjani Kumar (AAG-4)
		Mr. Alok Kumar Rahi, AC to AAG-4

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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 : 14-01-2020

Heard learned counsel appearing for the appellant as well as learned AAG-4 appearing for the State.

2. The appellant is aggrieved by the order dated 08.08.2019 passed by learned Single Judge in CWJC No. 19322 of 2018 by which and whereunder learned Single Judge set aside the enquiry report as well as punishment awarded to the appellant and remanded the enquiry back to the Disciplinary Authority with direction to make a fresh enquiry and conclude the same within a period of six months.

3. The grievance of the appellant is that the learned Single Judge committed error in remanding the enquiry to the Disciplinary Authority directing the concerned authority to make fresh enquiry and, furthermore, the grievance of the appellant is that the concerned authority has not even issue show-cause to the appellant as yet, particularly, in the circumstance when near about five months have already elapsed from the date of passing order dated 08.08.2019 in CWJC No. 19322 of 2018.

4. Learned counsel appearing for the appellant submits that learned Single Judge found that there was no



evidence against the appellant, but in spite of that learned Single Judge remitted the enquiry to Disciplinary Authority with direction to make fresh enquiry. Learned counsel for the appellant further submits that learned Single Judge at para 5 of the impugned judgement has noted that except the report there was no other material for proving the guilt of the appellant, but even then the learned Single Judge remitted the matter to the Disciplinary Authority. Learned counsel for the appellant further submits that the appellant is a retired person and he has already suffered a lot and, therefore, in the aforesaid circumstance the order of remand passed by the learned Single Judge must be set aside.

5. On the other hand, learned AAG-4 appearing for the State refuted the above-stated submissions arguing that even if it is assumed that there was only a report against the appellant, but admittedly the learned Single Judge directed the Disciplinary Authority to take statement of report maker and, therefore, it cannot be said that there was no material against the appellant. Learned AAG-4 further submits that the learned Single Judge directed to conclude the departmental proceeding within six months from the date of receipt/production of copy of the order dated 08.08.2019 and the time as fixed by the learned



Single Judge has not elapsed as yet. Learned AAG-4 further submits that the departmental proceeding shall be concluded expeditiously without further delay, if the appellant cooperates in the proceeding.

6. Having heard the contentions of the parties, we went through the record and we find that learned Single Judge noted that except a report, there was no material against the appellant, but simultaneously, the learned Single Judge also noted that the report maker was not examined and without recording his statement the concerned authority held the appellant guilty and awarded punishment to him. It would appear from the impugned judgment that learned Single Judge having taken note of the aforesaid fact, set aside the enquiry report as well as punishment awarded to the appellant and remitted the matter to the Disciplinary Authority for proceeding afresh with direction to conclude the aforesaid proceeding within a period of six months from the date of receipt or production of the order. Furthermore, we find that the period as fixed by the learned Single Judge has not been elapsed as yet and, therefore, the appellant cannot claim that the concerned authority failed to conclude the proceeding within the period as fixed by the learned Single Judge.



7. So far as order of remand is concerned, we do not think it proper to interfere into the order of remand as passed by the learned Single Judge vide impugned judgment because the learned Single Judge noted that the report maker was not examined by the Disciplinary Authority. Therefore, in the aforesaid circumstance, we have no option except to dismiss this Letters Patent Appeal and, accordingly, this Letters Patent Appeal stands dismissed. However, the respondents (concerned authority) must conclude the proceeding of the appellant within the period as fixed by the learned Single Judge vide order dated 08.08.2019 passed in CWJC No. 19322 of 2018. However, it is made clear that if the concerned authority fails to conclude the proceeding of the appellant within the period as fixed by learned Single Judge, the appellant shall be at liberty to pray before the court for quashing the proceeding initiated against him.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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