

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24500 of 2019

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Ashwini Kumar, aged about 57 years, son of Jagdish Prasad, Gender-Male, Resident of Mohalla- Shivpuri, P.S.- Hazaribag, District- Hazaribag (Jharkhand). At present resident of Flat No. 301, Devlok Apartment, New Patliputra Colony, Patna-800013, P.S.- Patliputra, District- Patna (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary, Department of Excise and Prohibition Department, Government of Bihar, Patna
3. The Special Secretary, Excise and Prohibition Department, Government of Bihar, Patna
4. The Under Secretary, Excise and Prohibition Department, Government of Bihar, Patna
5. The Deputy Secretary, Excise and Prohibition Department, Government of Bihar, Patna
6. The Commissioner (Excise) cum Inspector General of Excise and Prohibition Department, Government of Bihar, Patna
7. The District Magistrate, Nawada

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Akhilesh Dutta Verma, Advocate
For the Respondent/s : Mr.Vivek Prasad, G.P.7

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

7 21-12-2020 Heard the parties through the virtual court proceeding.

This application is for issuance of writ in the nature of mandamus directing the respondents to revoke the suspension of the petitioner which is continuing on an from 28.06.2016 by way of retrospective effect (Annexure-5) in the grab of Bihar Government (Classification, Control and Appeal) Rule 2005 under Rule-9(5) fro about 3 years and 5 months vide Memo No.2254 dated 28.06.2019 from the order of termination dated



28.06.2019 from the order of termination dated 28.06.2016 and also for payment of full consequential benefits from the date of termination i.e. 28.06.2016 in the light of order passed in C.W.J.C. No.610 of 2017 later on it was confirmed with certain modification in L.P.A. No.1123 of 2017 and for other writ/command/direction in the facts and circumstances of the case.

The fact in the writ petition is that the petitioner had joined the service on 08.09.1986 as an Assistant at Labour Employment Department, (Training Wing) and thereafter, qualified examination of Bihar Public Service Commission through proper channel and joined as Excise Inspector, Department of Excise on 29.05.1992 and thereafter got promoted on 15.04.2003 as Excise Superintendent. It is important to mention here that from 08.09.1986 to 22.05.2012, no departmental proceeding was initiated against the petitioner and the services of the petitioner was up to mark and satisfactory for department of Excise and Prohibition and department of Labour also.

The petitioner as a gazetted Government servant holding the post of Superintendent, Excise was proceeded against by service of a charge memo, a copy of which is



impugned at Annexure-18 to the writ petition in C.W.J.C. No.610 of 2017. On 22.05.2012, the petitioner served a departmental charge sheet in Form of Prapatra-(Ka) and thereafter, a departmental proceeding was initiated against the petitioner. The petitioner accordingly replied the charges levelled against him in departmental charge sheet by way of his show cause thereafter without complying the provisions contained in Bihar Classification Control and Appeal Rules 2005, an enquiry report was submitted by the departmental enquiry officer on 18.05.2015 found the petitioner guilty and thereafter, a second show cause was asked to the petitioner and receiving the notice of second show cause the petitioner asked certain documents under the provisions contained in Rule-17(11) of Bihar Classification, Control and Appeal Rules 2005.

Thereafter, without supplying the documents, the petitioner compelled to file second show cause and without perusing the second show cause and also without giving opportunity for hearing the disciplinary authority taken an ex-parte decision imposing major punishment mechanically by way of dismissal/termination of the petitioner from his services.

Against the order of termination, the petitioner filed review application before the Hon'ble Governor (Bihar). When



the review application filed before the Hon'ble Governor was not disposed of within a stipulated period the petitioner filed a writ application before this Hon'ble Court vide C.W.J.C. No.610 of 2017.

After hearing the said writ application bearing C.W.J.C. No.610 of 2017 was allowed in favour of the petitioner vide order dated 09.05.2017 passed by this Hon'ble Court observing that **“The order of Disciplinary Authority and proceed to uphold the guilt mechanically without discussing the defence led by the petitioner and as I have observed, without dealing with the issue raised. The entire proceeding questioned in the writ petition is a bundle of illegalities and cannot be upheld and in consequence, the entire proceedings including the charge sheet, the enquiry report together with the impugned order of dismissal bearing memo no.3038 dated 28.06.2016 passed by the State Government in its Registration, Excise and Prohibition Department, impugned at Annexure: 28 cannot be upheld and are accordingly quashed and set aside. The petitioner is reinstated with full consequential benefits.**

The writ petition is allowed. In result the review petition stands disposed of”.



Thereafter, being aggrieved and dissatisfied with the order dated 09.05.2017, the State preferred an Intra Court Appeal vide L.P.A. No.1123 of 2017, which was duly heard by the Division Bench. Vide order dated 11.10.2018, the said L.P.A. bearing L.P.A. No.1123 of 2017 was partly allowed in favour of the State with certain modification of the order passed in C.W.J.C. No.610 of 2017 observing that :-

“In view of the above and for the reasons stated above, we modify the impugned judgment and order passed by the learned Single Judge to the extent to reserve liberty in favour of the appellant-State to hold a fresh de novo enquiry in accordance with law and the rules on the same charge, the present Letters Patent Appeal is partly allowed to the aforesaid extents, which is annexed as Annexure-2 to the writ application.”

Learned counsel for the petitioner further submits that the order of writ court was not interfered by the Division Bench of this Hon'ble Court vide his order dated 11.10.2018 passed in L.P.A. No.1123 of 2017 regarding payment of consequential benefits neither the Division Bench passed any order to put the petitioner under suspension by way of retrospective effect i.e. on and from 28.06.2016 when the petitioner was terminated. Learned counsel for the petitioner further submits that after



passing the order of C.W.J.C. No.610 of 2017, the petitioner represented on 14.07.2017 praying therein for his reinstatement and payment of full consequential benefits but the respondents sitting over that for non-payment of full consequential benefits taken a plea that the State preferred an Intra Court Appeal before Division Bench of this Hon'ble Court, which is annexed as Annexure-3 to the writ petition. He further submits that after disposal of L.P.A. No.1123 of 2017, the petitioner again filed a representation before the respondents for his reinstatement and also for payment of the full consequential benefits, which is annexed as Annexure-4 to the writ petition.

In spite of the order passed by Single Bench of this Hon'ble Court and also confirmed by a Division Bench of this Hon'ble Court regarding reinstatement and for payment of full consequential benefits, the respondents authority sitting tight over that. He further submits that after a lapse of 8 months in spite of order passed by Single Bench of this Hon'ble Court and also confirmed by a Division Bench of this Hon'ble Court, the respondents suspended the petitioner by way of retrospective effect from the date of termination i.e. on and from 28.06.2016 in garb of Rule-9(5) of Bihar Classification, Control and Appeal Rules 2005 vide his memo no.2254 dated 28.06.2019. He



further submits that in the said letter, there is no order for payment of full consequential benefits in spite of the order passed by the Single Bench and affirmed by the Division Bench of this Hon'ble Court. This action of the respondents is arbitrary, illegal, unconstitutional and against the provisions contained in Bihar Classification, Control and Appeal Rules 2005, which is annexed as Annexure-5 to the writ petition. Learned counsel for the petitioner further submits that the petitioner is made a victim of discrimination which is utter violation of Article 14 of the Constitution of India which talks with Right of Equality. For example, the same government vide his order dated 29.01.2020 revoke the suspension of one Sunil Kumar Dubey, who is also made a victim of alleged trap case and during pendency of the departmental proceeding, his suspension was revoked vide letter no.555 dated 29.01.2020. He further submits that the petitioner was suspended by way of retrospective effect i.e. on 28.06.2016 from the date of termination in spite of quashing the order of termination passed in C.W.J.C. No.610 of 2017 and later on it was affirmed by L.P.A. Court vide L.P.A. No.1123 of 2017. Another example is that one Mahendra Chaudhary, the clerk in the department of Excise and Prohibition and another person namely Haider Ali,



who is Sub Inspector in the department of Excise and Prohibition, both are found guilty in departmental proceeding but they are released from suspension and posted in different places. These are clear cut example of discrimination which infringed the right of petitioner from the Right of Equality protected under Article 14 of the Constitution of India. Learned counsel for the petitioner further submits that in the case of **Ajay Kumar Chaudhary vs. Union of India through its Secretary and other** reported in **2015 (7) SCC 291** and Civil Appeal No.8427-8428 of 2018. The State of Tamil Nadu represented by Secretary of Government (Home) vs. Pramod Kumar, I.P.S. and another, the Hon'ble Apex Court hold that the prolong suspension order should not be extended beyond three months, if within this period charge sheet is not served on delinquent employee further the Apex Court hold that if charge sheet is served a reasoned order must be passed for extension order. It is important to mention here that there is no reasoned order of extension of prolonged suspension of the petitioner. Hence, putting the petitioner under suspension for indefinite period by way of retrospective effect is bad in law and against the judgment passed by the Apex Court in both the cases.

Per contra, learned counsel for the State-respondents



submits that the writ order on the basis of which, the petitioner is claiming benefit has been modified and is partly allowed in favour of the State vide order dated 11.10.2018 passed in L.P.A. No.1123 of 2017. He further submits that in the L.P.A., the earlier order of dismissal/termination of service of the petitioner, which was passed by the State authorities vide Memo No.3038 dated 28.06.2016 has been set aside as proper evidences and witnesses were not examined before passing the major punishment. However, the Hon'ble Division Bench of the High Court considering the serious allegations and misconduct alleged against the petitioner deemed it fit and proper to hold a fresh enquiry against the petitioner in accordance with law and rules. Learned counsel for the respondents further submits that the Hon'ble Division Bench further stated that in the State of Bihar, there is prohibition against liquor and as the allegations against the delinquent are in colluding with the licensee to secure personal gains and inefficiency in discharge of the duties and disobedience of the orders of superiors and further causing revenue loss to the State, if fresh enquiry is conducted then no prejudice shall be caused to this petitioner as ample opportunity will be given to the delinquent to prove the innocence in fresh departmental enquiry. It is in this light of the matter that the



Hon'ble Division Bench of the High Court gave the liberty to the State-respondents to hold fresh de novo enquiry in accordance with law and the rules on the same charge. Learned counsel for the State-respondents further submits that the entire order dated 11.10.2018, the Hon'ble Division Bench has nowhere stated that the petitioner will be entitled to all consequential benefits, since the allegations are serious and enquiry has to be conducted de novo. It has only agreed with the Hon'ble Single Bench to the extent the memo no.3038 dated 28.06.2016 is set aside as it was not in accordance with the law and rules but so far any relief consequent to that cannot be made effective as it has to be subject to the re-examination and re-enquiry in a fresh departmental proceedings. He further submits that so far as the retrospective application of the suspension order is concerned, it is stated that by virtue of Memo No.3038 dated 28.06.2016, the petitioner was dismissed from service. In order to initiate fresh disciplinary proceeding as per the directions of the order dated 11.10.2018 in L.P.A. No.1123 of 2017 of the Hon'ble Division Bench, Rule 9(5) of the Bihar Government Services (Classification, Control and Appeal) Rules, 2005, comes into effect which states as follows :

“9(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a



Government Servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against the government servant to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case, on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.”

He further submits that therefore, no illegality has been caused in retrospective application of the suspension order, rather even subsistence allowance will be paid to the petitioner for the period for which he was originally dismissed by the earlier order dated 28.06.2016. Learned counsel for the respondents further submits that relates to point of discrimination against the petitioner which is misconceived and ill-founded, hence denied. It is stated that the cases of those persons are pending in Vigilance Court so as per Rule 14(vii) of Bihar CCA Rules, 2005 therefore reduction punishment has



been accorded till the matter is decided and disposed of by the vigilance court. Therefore, no comparison of equal treatment can be made by the petitioner as there is general principle of “Like should be treated alike”.

After hearing both the parties and gone through the record, it is admitted fact that the petitioner was suspended from the retrospective effect from 28.06.2016 from the date of his termination.

A counter affidavit has been filed by the State and rejoinder affidavit also filed by the respondent nos.1 to 6. In both counter affidavit and rejoinder affidavit, the respondents have not mentioned regarding the progress of the enquiry. In the case of **Ajay Kumar Choudhary (supra) - The State of Tamil Nadu represented by Secretary of Government (Home) (supra)**, it is frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. It is evident from the counter affidavit and rejoinder affidavit filed by the respondents that there is no progress in the departmental enquiry and petitioner has been under suspension from the year 2012.

Long continuation of suspension pending departmental enquiry is punitive and affected means of



livelihood of the suspended employee. An order of suspension of a government servant does not put an end to his service under the government.

In view of the above facts and circumstances, there is no progress in the departmental enquiry and the petitioner has been under suspension more than eight (8) years.

On the basis of the material on record, I have convinced that no useful purpose would be served by continuing the petitioner under suspension. Continued suspension during the departmental enquiry was totally unwarranted. Let the departmental enquiry be held and order of suspension is set aside. Regarding consequential benefits are depended upon final outcome of departmental enquiry.

In the facts and circumstances, this writ petition is partly allowed.

(Anjani Kumar Sharan, J)

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