

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.264 of 2019

In

Civil Writ Jurisdiction Case No.3230 of 2017

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1. The State Of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna. Respondent no.1
 2. The Principal Secretary, Department of Home, Government of Bihar, Patna. Respondent no.2
 3. The Inspector General (Prisons), Department of Home, Government of Bihar, Patna. Respondent no.3
 4. The Joint Secretary- cum-Director (Admn.) (Jail), Home Department, Government of Bihar, Patna. Respondent no.4
 5. The District- Magistrate-cum-Collector, Nalanda. Respondent no.5
 6. The District Development Commissioner, Nalanda. Respondent no.6
 7. The Jail Superintendent, District Jail, Hajipur, Vaishali. Respondent no.7

... .. Appellant/s

Versus

Ram Lakhan Yadav Son of Sri Hari Prasad Yadav, resident of Village Makanpur, P.S.- Sahkund, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mrigendra Kumar, A.C. to A.G.

For the Respondent/s : Mr. NAVIN SHARMA

Mr. SUNIL KUMAR, Advocates

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 02-02-2021

Heard the parties.

Learned counsel for the appellant/State submits

that this case is squarely covered by a judgment of Division

Bench of this Court dated 02.01.2019 passed in LPA No.1661



of 2018 (**The State of Bihar through the Principal Secretary, Department of Home (Prison), Government of Bihar, Patna and Ors. and Moti Lal**) which is not controverted by learned counsel for the petitioner/respondent, as such, present LPA is disposed of in same terms. The direction issued in aforesaid LPA is reproduced hereinbelow:-

“X X X X X X

In view of what has been concluded by us herein above, we partly allow this appeal and set aside the impugned judgement to the extent that the enquiry proceedings shall re-commence from the stage of leading of oral evidence by the appellants and the respondent-petitioner shall be given an opportunity to rebut the same and lead his defense in whatever possible manner he may so choose to in the enquiry proceedings. For this, the matter stands remitted to the enquiry officer who shall conduct the enquiry expeditiously and conclude the same, but not later than three months from today. The respondent-petitioner shall cooperate in the enquiry so that the enquiry is concluded within the time as directed above.

One of the submissions raised by Sri Verma, learned counsel for the State of Bihar, is that in view of Rule 9(5) of 2005 Rules, the respondent-petitioner should not be allowed any consequential benefits. On this, Sri Bindhyachal Singh, learned counsel for the respondent-petitioner, contends that the recommencement of the enquiry should not deprive the respondent petitioner of his service benefits to which he is entitled inasmuch as the punishment order has been set aside by the learned Single Judge. Ordinarily, the



consequences of the setting aside of a punishment order does result in all the consequential benefits to which an employee may be entitled, but in this regard, we find that the procedural lapses on the part of the respondents has led to the conclusions drawn by us hereinabove and in which situation Rule 9(5) of 2005 Rules is clearly attracted. We, therefore, clarify that the respondent-petitioner shall remain under suspension till the conclusion of the enquiry and shall be entitled to receive subsistence allowance only. The respondent-petitioner shall be entitled to his arrears of subsistence allowance as well, keeping in view the provisions of Rule 9(5) of the 2005 Rules. In the event it is ultimately found on the conclusion of the enquiry that the respondent-petitioner is entitled to any such consequential relief, it shall be open to the disciplinary authority to pass appropriate orders in this regard as may be necessary after the enquiry concludes and at the time of passing of the final orders by the said authority. The appeal is, therefore, allowed, subject to the directions herein above.”

This LPA, is, accordingly, disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2021
Transmission Date	NA

