

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1259 of 2018

In
Civil Writ Jurisdiction Case No.5257 of 2011

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1. The State Of Bihar
 2. The Director, Primary Education, Human Resources Development Department, Government of Bihar, Patna
 3. The Regional Deputy Director of Education Saran Division, Saran at Chapra.
 4. The District Education Officer, Siwan.

... .. Appellant/s

Versus

Sri Rajeshwar Prasad Son of Late Daroga Prasad, resident of Village-Bankatwa, P.O. Choubey Tola, P.S. Chnpatia, District- West Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Vivek Prasad G. P. 7
For the Respondent/s : Mr.Anand Kumar Ojha

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 15-09-2022

Re:- I.A. No. 01 of 2018 (6947 of 2018)

Heard the Interlocutory Application.

There is delay of 181 days in filing L.P.A.

For the reasons stated in the application and
affidavit delay stands condoned. I.A. No. 01 of 2018 stands
allowed.



Matter is taken up for final disposal on merit with the consent of learned counsels for the respective parties.

The present appeal is by the state in assailing the order dated 05.02.2018 passed in C.W.J.C No 5257 of 2011. Respondent Rajeshwar Prasad was subjected to disciplinary proceedings in framing article of charges on 15.07.1993. It was concluded in imposition of penalty of dismissal from service on 19.06.1995. Dismissal order dated 19.06.1995 was the subject matter of C.W.J.C. No. 1703 of 1996. On 06.05.2010 C.W.J.C. No. 1703 of 1996 was allowed and inquiry was remanded to the department to commence inquiry from the defective stage within a period of six months.

Extract of the order dated 06.05.2010 reads as under:

“However, this is not denied that no show cause notice was issued to this petitioner and copy of the enquiry report was also not served on him to enable him to meet the findings of the enquiry officer and file reply to the same. The report of the enquiry officer is annexed as Annexure-2 with the writ application. The report shows that the enquiry officer referred to several documents and records available in offices of the respondents and came to the conclusion that the charges against petitioner were proved. The enquiry report nowhere mentions that inspite of adequate notice petitioner had not appeared in the enquiry and had not participated in the same. This is also not mentioned in the report



that in absence of the petitioner, his reply to each and every charges were examined and found not sustainable. The impugned order also does not show that any second show cause notice was issued to the petitioner along with the enquiry report which the petitioner did not receive or the same could not be served on him due to some compelling reasons. On the other hand, the impugned order shows that the records on the basis of which enquiry report was submitted to the disciplinary authority did not contain reply of the petitioner to the charges. This establishes that the reply of the petitioner to the charges were never considered by the respondents at any stage. These admitted facts clearly go in support of the submissions of learned counsel for the petitioner. The impugned order and the entire proceeding of the enquiry thus clearly stand vitiated on account of gross violation of Principles of Natural Justice.

In the circumstances, the impugned order is unsustainable in law and hence the same is quashed. Respondents will be at liberty to proceed against the petitioner afresh from the stage of submission of show cause reply by the petitioner to the charges, after supplying or allowing him to inspect the relevant documents and records as respondents may propose to rely in the proceeding and after giving him adequate opportunity to appear in the proceeding and defend himself.

If the respondents decide to proceed in the matter afresh, this must be done and completed within a period of six months from the date of receipt/production of a copy of this order.

It is made clear that if the proceeding is not concluded and final orders are not passed by the respondents within six months, they shall be precluded from proceeding in the matter afresh and petitioner will be entitled to be restored in service with



all consequential benefits. It will be open to the respondents to proceed in the matter and conclude the same within a time fixed by this Court even if petitioner does not co-operate in the proceeding inspite of adequate opportunity provided to him.” (underline supplied)

The appellants- State/department have not obeyed the order dated 06.05.2010 in concluding the departmental inquiry within a period of six months and it was concluded only on 04.02.2011, while imposing penalty of dismissal from service. It is to be noted that appellants- department have not submitted review petition before the learned Single Judge in so far as modifying the time limit stipulated from six months and so also L.P.A. was not preferred. In other words, order dated 06.05.2010 has attained finality. Second dismissal order dated 04.02.2011 is contrary to order dated 06.05.2010 passed in C.W.J.C. No. 1703 of 1996. In the absence of extension of time to complete inquiry from the defective stage, the appellants- department are not permitted to conclude the departmental inquiry beyond six months period stipulated in the order dated 06.05.2010 by this court.

In the light of these facts and circumstances, there is no infirmity in the order dated 05.02.2018 passed in C.W.J.C. No. 5257 of 2011. Accordingly the present Letters



Patent Appeal stands dismissed.

Learned Counsel for the respondent submitted that his retiral benefits have not been settled. He is at liberty to make necessary representation if he has not already submitted within a period of two months from today. If such representation is submitted, the competent authority is hereby directed to take note of and settle the retiral benefits within a reasonable period of time of three months from the date of receipt of representation to be submitted by the respondent- Sri Rajeshwar Prasad.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

rakhi/-

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CAV DATE	
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