

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.548 of 2018

Shiv Prakash Singh S/o Late Udai Bhan Singh, Resident of Village- Bareria,
P.S.- Belipar, District- Gorakhpur (UP) Presently posted as Assistant, Civil
Court, Sitamarhi at present deputed in Civil Court, Sheohar (Bihar).

... .. Petitioner

Versus

1. The Honble High Court of Judicature at Patna through the Registrar General Patna High Court.
2. The Registrar General (Administration), the High Court of Judicature at Patna.
3. The District and Session Judge, Civil Court, Sitamarhi.
4. The Judge-in-Charge, Civil Court, Sitamarhi.
5. The District and Sessions Judge, Civil Court, Sheohar at Sheohar.
6. The Judge-in-Charge, Civil Court, Sheohar at Sheohar.
7. The State of Bihar through Chief Secretary, Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Bindeshwar Sah, Adv.
For the State	:	Mr. Prashant Pratap -GP2
		Mr. Lala S.N. Ravi, AC to GP-2
For the High Court	:	Mr. Piyush Lall Adv.

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 01-08-2022

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel representing the Patna High
Court.

2. The petitioner, was proceeded against on certain
charges of misconduct, while he was working as Office Clerk in
the District Court. The outcome of the proceedings were
challenged by the petitioner before this Court which culminated
into order dated 06/09/2016 passed in LPA No. 825 of 2015. The



matter was remitted to the District and Sessions Judge to pass order afresh giving the petitioner two weeks time to file a reply. The District and Sessions Judge was under an obligation to pass an order after taking into consideration the petitioner's reply.

3. As a result, the earlier punishment of deduction of three increments was modified and order dated 17-02-2017 was issued by the District and Sessions Judge, Sitamarhi, relevant extract of which, reads as follows:-

“Having regard to the facts and circumstances, I am of the view that said punishment is severe and excessive and not commensurate with the delinquency alleged.

Under the facts and circumstances set forth above the Appointment Order no.- 26/2006 dated 07-08-2006 is hereby modified to the extent that the three increments deducted from the salary of the delinquent Sri Shiv Prakash Singh for all times to come is hereby reduced to one increment for all times to come with effect from the date of the said Order no.- 26/2006. However, it is ordered that there will be no payment of arrears after reduction of the said sentence. The delinquent may be posted as Office Clerk and Bench Clerk subject to the report of the P.O.

This order will come into force with immediate effect.”

4. Thereafter, on 25-05-2017, the petitioner has approached the District and Sessions Judge Sitamarhi by his Application (Annexure- I). He has requested the District and



Sessions Judge that in compliance with the order of punishment dated 17-02-2017 his due and admissible amounts be paid to him.

5. The learned counsel representing the High Court, therefore, raised a preliminary objection regarding the maintainability of the instant writ petition on the ground that the petitioner had accepted the findings and has acted upon the same. He has also received payments due to him as a result of the order of punishment; and his application dated 25-05-2017. Having done so, without any demur he is precluded from assailing the order in-question.

6. The learned counsel for the petitioner submits that the order has been passed in violation of the mandate of the Division Bench in LPA No. 825/2015. He, however, has not denied or disputed the fact that the petitioner, on his own volition, has approached the authorities for implementation of the order dated 17-02-2017 under his own application dated 25-05-2017 and that he has availed the benefits after implementation of the order of punishment. Under the circumstances, this Court would observe that the relief prayed for in the instant writ petition is not maintainable. The petitioner is estopped under the principle of promissory of equitable estoppel from making such a prayer in the



instant writ proceedings, having availed the consequential benefits
of the order dated 17-02-2017.

7. The writ petition is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11-08-2022
Transmission Date	

