

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1665 of 2019

In
Civil Writ Jurisdiction Case No.1518 of 2017

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Shankar Ghosh S/o Late Badal Ghosh, R/o Old Police Lines, North of Gandhi
Maidan, P.O. Bankipore, District - Patna

... .. Appellant/s

Versus

1. The State of Bihar through the Commissioner and Secretary, Home (Police)
Department, Govt. of Bihar, Patna.
2. The Director General cum Inspector General of Police, Bihar, Patna.
3. The Dy. Inspector General of Police, Military Police, Central Zone, Phulwari
Sharif, Patna.
4. The Commandant, B.M.P.-14, Phulwari Sharif, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ram Hriday Prasad, Advocate Ms. Maruti Kumari, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 07-11-2022

In the instant Letters Patent Appeal, the appellant has questioned the validity of the order of the learned Single Judge dated 18.11.2019 passed in CWJC No. 1518 of 2017.

02. The appellant joined service as a Cook on 11.03.1988 in Bihar Military Police. He was subjected to disciplinary proceedings in framing of article of charge relating to remaining unauthorized absent for twenty days and further past



absence have been taken into consideration. The charge memo dated 06.07.2013 was enquired into by the Inquiring Officer and submitted report on 02.01.2014. On receipt of Inquiring Officer's report disciplinary authority issued a show cause notice on 01.04.2014 for which appellant had submitted his reply on 15.04.2014. The disciplinary authority proceeded to impose penalty of dismissal from service pursuant to the inquiry proceedings on 24.05.2014. The appellant aggrieved and dissatisfied with the order of the dismissal preferred appeal and memorial. In both the proceedings he has suffered orders on 23.07.2014 and 26.10.2016 respectively. Learned Single Judge rejected the appellant's writ application, hence, the present appeal by the appellant.

03. Learned counsel for the appellant vehemently contended that having regard to the alleged charge that he remained absent for twenty days and the past misconduct has been taken note off in dismissing the appellant's services. Such a punishment would be too harsh as appellant has rendered service from 11.03.1988 till 24.05.2014, the date on which he was dismissed from service. It is also submitted that he is a Class-IV employee and for remaining absence for few days imposition of



penalty or dismissal from service would be too harsh on him and it affects livelihood of his family.

04. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that having regard to the alleged allegations relating to remaining twenty days absent and further he was a habitual absentee, therefore, there are no infirmity in the orders of the disciplinary authority and next higher authorities. The aforesaid material has been taken note off by the learned Single Judge while dismissing the writ petition. Hence, the appellant has not made out case so as to interfere with the order of the learned Single Judge dated 18.11.2019 passed in CWJC No. 1518 of 2017.

05. Heard learned counsels for the respective parties.

06. The appellant joined service as Cook on 11.03.1988 in Bihar Military Police. He was subjected to disciplinary proceedings on 06.07.2013 for remaining twenty days absent. In the charge memo itself past misconduct to the extent of remaining absence frequently has been taken note off. No doubt, sympathy cannot be extended to a habitual absentee at the same time we interfere with the quantum of penalty only on the score that appellant was only a Cook and he is a Group-D employee and it is not a case of misappropriation of Government fund or heinous



charge has been framed against him. Having regard to the length of service rendered by him from 11.03.1988 to 24.05.2014 imposition of penalty of dismissal from service for remaining absent for twenty days read with past misconduct would be too harsh. Imposition of penalty of dismissal from service for remaining twenty days absent shocks the conscience of this Court. Therefore, instead of remanding the matter to the disciplinary authority to revisit for imposition of penalty other than dismissal, we thought that appellant is out of service from 24.05.2014 and we are in the year 2022, we modify the penalty of dismissal to that of compulsory retirement w.e.f. 24.05.2014. Accordingly, the order of the disciplinary authority dated 24.05.2014, appellate authority dated 23.07.2014, Memorial dated 26.10.2016 and order of the learned Single Judge dated 18.11.2019 passed in CWJC No. 1518 of 2017 stands set aside.

07. The concerned respondent is hereby directed to extend all monetary benefits which is due to the appellant with reference to imposition of penalty of compulsory retirement. In this regard, necessary calculation shall be made in respect of retiral benefits, pension and arrears of pension shall also be calculated and disbursed in favour of the appellant and continue to pay pension from time to time. The above exercise shall be completed



within a period of four months from the date of receipt of this order.

08. In the result, the present Letters Patent Appeal No. 1665 of 2019 filed on behalf of the appellant is allowed in part.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

