IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.202 of 2022
In
Civil Writ Jurisdiction Case No.8491 of 2015

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Md. Sagir Khan S/o Late Mobin Khan Resident of Village- Brahmpur, Police Station- Bhagwan Bazar, District- Chapra, Saran.

... ... Appellant/s

Versus

1. State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Commissioner of Excise, Government of Bihar, Patna.
3. The Superintendent of Excise, Muzaffarpur.
4. The District Magistrate, Muzaffarpur.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Maheshwar Prasad Adv.
For the Respondent/s : Mr.Pawan Kumar (A.C. To A.G.)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-01-2023

On 13.12.2022 the following order was passed.

> **“<u>Re: I.A No. 1 of 2022</u>**
>
> Heard I.A. No. 1 of 2022.
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> There is delay of 1 year 7 months and 2 days insofar as questioning the order of the learned Single Judge dated 21.08.2019 passed in C.W.J.C. No. 8491 of 2015. Reasons assigned is that appellant has filed review petition No. 318 of 2015 and it was withdrawn on 13.04.2022, thus, there is a delay.
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> Accordingly, delay in filing L.P.A. stands condoned. I.A. No. 1 of 2022 stands allowed.

> Respondent No. 3 – The Commissioner of Excise, Government of Bihar, Patna is hereby directed to file his personal affidavit as to who is the appointing authority to the post of Sub Inspector of Excise on the next date of hearing in order to ascertain as to whether District Magistrate is empowered to impose any of the penalty against the Sub Inspector of Excise or not?
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> Re-list this matter on 03.01.2023."

2. Pursuant to the previous order counter affidavit on behalf of the 3rd respondent is filed. In Para 5 and 6 it is stated as under:-

> "5. That at the outset, the present appeal is contested and opposed as the Appellant has the alternate remedy of appeal against the order before the Secretary of the Department of Prohibition, Excise and Registration (hereinafter to be referred as "the Department"). Hence, the matter may be reverted and order passed is in consonance with law and due procedure has been followed while passing and Impugned order dated 21.08.2019.
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> 6. That the averment made in paragraph 1 including the relief sought for is contested as no irregularity has occurred and due of process of law has been followed save and except that the appellate authority would not be the Divisional Commissioner but the Secretary of the Department before whom the Appellant should file a case for consideration of his case which will be duly considered."

3. Brief facts of the case are that petitioner was a holder of the post of Sub Inspector of Excise. District

Magistrate of Muzaffarpur has taken a disciplinary action against the petitioner and impose the penalty on 26.10.2013. Feeling aggrieved by the penalty order dated 26.10.2013 appellant invoked remedy under Article 226 of Constitution. Learned Single Judge rejected the appellant’s petition on 21.08.2019 while making an observation that petitioner has a statutory remedy before the appellate authority, still aggrieved filed Civil Review and there after Civil Review was withdrawn, hence, the present L.P.A.

4. Learned counsel for the appellant submitted that District Magistrate, Muzaffarpur has no authority to take action against Sub Inspector of Excise as he is not appointing authority to the post of Sub Inspector of Excise. The appointing authority to the post of Sub Inspector is Commissioner of Excise. Once an order has been passed by incompetent authority, question of asking the aggrieved person to approach appellate authority or invoke remedy of appeal is incorrect.

5. *Per contra*, learned counsel for the respondent stick to the version of the counter affidavit filed on behalf of the 3rd respondent in which it is fairly submitted that appointing authority to the post of Sub Inspector of Excise is Commissioner of Excise and not the District Magistrate.

6. In the light of these facts and circumstances, penalty order dated 26.10.2013 and order of the learned Single Judge dated 21.08.2019 passed in C.W.J.C. No. 8491 of 2015 are set aside and writ petition filed by the appellant stands allowed, consequentially L.P.A is also allowed.

7. The concerned authority is hereby directed to restore the pay as if imposition of penalty dated 26.10.2013 is not existing in the eye of law and release all difference of monetary benefits to the appellant within a period of three months from the date of receipt of this order. We would have remitted the matter back to the disciplinary authority to hold an inquiry against the alleged charge. However, having regard to the allegation that it is not a case of misappropriation of fund or falsification of Government money and the fact that appellant has already attained age of superannuation and retired from service. Therefore, it is not a fit case for remanding the matter to hold an inquiry.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

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CAV DATE	
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