

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.258 of 2022

In
Civil Writ Jurisdiction Case No.15732 of 2016

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Kanti Devi @ Kamti Devi W/o Lalit Kumar Ravidas Resident of Naya Buxar,
Ward No. 8, P.S. Buxar, District- Buxar, at present R/o Village- Kishanganj,
P.S. Kishanganj, District- Kishanganj.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Home Commissioner Department of Home Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Darbhanga Region, Darbhanga.
5. The Deputy Inspector General of Police, Purnea Region, Purnea.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Digvijay Kumar Ojha, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar Ghorsarvey, AC to AAG-3
		Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-08-2023

The appellant, who was dismissed as an Assistant Sub-Inspector (for brevity, ASI), impugned the order of the learned Single Judge which directed her to avail the appellate remedy. In fact the learned Single Judge found that the appellate remedy was availed on 05.01.2015, against the order of dismissal dated 28.05.2007. Finding the alternate efficacious remedy having been invoked, the writ petition was dismissed.

2. The learned counsel for the appellant vehemently



contends that the learned Single Judge refused to take into account the fact that the appeal stood dismissed and the counter affidavit in the writ petition specifically stated that the appeal was dismissed and also produced the appellate order as Annexure-F which was dated 12.09.2016.

3. We put a specific query to the appellant, as to why the appellate order was not challenged by way of an amendment in the writ petition. However, the learned counsel for the appellant had no answer to it and it was submitted that there was no proper service of the appellate order on the appellant. In any event, we see from the counter affidavit filed on 09.01.2017, that the appellate order was produced as Annexure-F. There could have been a challenge to the appellate order by way of an amendment, which was not done before the learned Single Judge.

4. The learned Government Advocate also points out that there is a provision for a memorial before the Government, which has not been availed of by the appellant. We see that memorials and revision are enabled from the Bihar Police Manual, Volume-I. With respect to a person in the rank of ASI and below, the memorial is to be filed before the Inspector General, who is the Appellate Authority in Annexure-F. Hence,



there can be no further memorial to the very same authority. However, we see Clause 853A(b); a non obstante clause, that the State Government has the ultimate authority to call for the proceedings in any disciplinary case, even when no appeal or memorial lies, and pass such order as it may deem fit. The *suo-motu* power conferred on the State Government could also be invoked with an application.

5. In the above circumstances, we are of the opinion that the appellant could be relegated to the remedy of a memorial. The appellant shall file a memorial, if she so desires before the State Government within a period of two months from the date of receipt of the certified copy of judgment.

6. We make it clear that due to the long delay caused in filing the memorial, even if, the appellant is taken back in service the appellant cannot have any claim for back wages between 12.09.2016, the date on which Annexure-F was passed and the date on which the memorial is filed before the Government. Insofar as the back wages for the prior period, it is left to the Government to decide, if the memorial goes in favour of the appellant. Needless to say that if the Government rejects the memorial then there could be a challenge to that before this Court.



7. With the above observation, the appeal stands disposed of making it clear that we have not spoken on the merits of the matter.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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