IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1682 of 2018
In
Civil Writ Jurisdiction Case No.18055 of 2018

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1. The State of Bihar, through Chief Secretary, Old Secretary, Govt. of Bihar, Patna.
2. The Secretary, General Administration Department, Govt. of Bihar, Patna
3. The Additional Secretary, General Administration Department, Govt. Of Bihar, Patna
4. The Accountant General, Bihar, Patna.

... ... Appellant/s

Versus

Kumar Ajit Singh S/o Late Indradeo Singh R/o B-304, Ssanjana Apartment, Ara Garden Road, Near Jagdeo Path, Patna-14, P.S.- Danapur, District- Patna

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Gopal Krishna AC To GA-7
For the Respondent/s	:	Ms. Kalpana, Advocate
For State	:	Mr. Gyan Prakash Ojha (GA-7)
		Ms. Sushmita Ojha, Advocate
		Mr. Abhishek Singh (AC to GA-7)

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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 : 06-02-2023

The present L.P.A is preferred by the State of Bihar against the order of the learned Single Judge dated 21.06.2018 passed in C.W.J.C. No. 18055 of 2010.

2. Brief facts of the case are that respondent – Kumar Ajit Singh was subjected to disciplinary proceedings on the alleged allegations that he had committed misdeeds while holding the post of Executive Magistrate, Pakur in the Treasury

Office. It is alleged that while handling certain bills matter, he is stated to have violated various provisions of Bihar Finance Rules which has resulted in loss of Rs. 3.5 Lakhs. In this regard, parallel proceedings were initiated like holding of a departmental inquiry as well as criminal proceedings. In the criminal proceedings, he is stated to have been acquitted. On the other hand, departmental inquiry was concluded in imposition of penalty of cutting in pension to the tune of 20%.

3. Feeling aggrieved by the penalty, respondent is stated to have filed Review Petition before the Government. The State Government modified the disciplinary authority's order to the extent of cutting of pension from 20% to that of 10%. Both the orders were subject matter of C.W.J.C. No. 18055 of 2010. The learned Single Judge has taken note of the disciplinary authority's order and gave a finding that there is non-compliance to Rule 43(b) of Bihar Pension Rules, 1950 to the extent that disciplinary authority has not analyzed and given finding whether charges are grave misconduct or not?

4. Rule 43(b) of Bihar Pension Rules, 1950 reads as under:-

> "The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether

permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement: **(Underline Supplied)**

Provided that -

(a) Such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment.

(I) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) Bihar Public Service Commission, shall be consulted before final orders are passed."

5. Perusal of the disciplinary authority's order, it is crystal clear that disciplinary authority's order is not in consonance with the aforementioned provision. Accordingly, learned Single Judge has set aside the order of punishment dated 17.09.2009 and appellate authority's order dated 08.06.2010. Feeling aggrieved by the learned Single Judge's order, State has preferred the present L.P.A.

6. Learned Counsel for the appellant vehemently contended that having regard to the alleged charges levelled against the respondent, it is a case for imposition of penalty. Financial irregularities would fall under the definition of grave misconduct. Therefore, order of the learned Single Judge is liable to be set aside.

7. Learned counsel for the appellant on instruction submitted that during pendency of the present L.P.A., the State has withdrawn the order of penalty on 03.02.2020 in the light of M.J.C. No. 5317 of 2018 proceedings, such withdrawal is subject to L.P.A. decision.

8. Per contra, learned counsel for the respondent resisted the aforesaid contentions and supported the order of the learned Single Judge to the extent of disciplinary authority's order is not in consonance with Rule 43(b) of Bihar Pension

Rules, 1950. Hence, no interference is invited from the L.P.A. bench.

9. Heard learned Counsels for the respective parties.

10. Core issue involved in the present *lis* is whether order of the disciplinary authority is in order or not and further whether L.P.A. bench could interfere with the order of the learned Single Judge or not? From perusal of the disciplinary authority's order, it is evident that there is no discussion relating to grave misconduct by the disciplinary authority to the extent that there is a non-application of mind and so also in consonance with spirit of Rule 43(b) of Bihar Pension Rules, 1950. Further, we noticed that there is no determination about amount of loss caused to the State Exchequer by the acts of respondent. Unless and until loss of any financial nature is caused by a particular employee and such determination is not forthcoming in the preliminary inquiry or in the departmental inquiry, one cannot draw inference that concerned employee caused financial loss to the State Exchequer. It is only on presumption that there is loss to the tune of Rs. 3.5 Lakhs as is evident from the records. Therefore, in the absence of any finding that respondent has caused financial loss to the State Exchequer and it has been proved in the departmental inquiry.

One cannot draw inference that it is a grave misconduct. Moreover, disciplinary authority has not analyzed whether proved charge amounts to grave misconduct or not?

11. Question of withdrawing the punishment on 03.02.2020 *vide Memo No.* 1700 was not warranted for the simple reason that learned Single Judge has already set aside the order of penalty dated 17.09.2009 read with 08.06.2010. Orders which were set aside by this Court cannot be withdrawn by the State Government, since penalty orders were not existing in the eye of law as on 03.02.2020.

12. In the light of these facts and circumstances, the appellants have not made out a case so as to interfere with the order of the learned Single Judge dated 21.06.2018 passed in C.W.J.C. No. 18055 of 2010.

13. Accordingly, present L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	NAFR
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