

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 22197 of 2011

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Shailendra Kumar Kashyap, S/O Late Madan Mohan Prasad Singh, R/O
I.A.S. Colony, West Of Canal, New Bailey Road, P.S.- Rupaspur, Patna
... .. Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat, Govt. of Bihar, Patna
2. Commissioner of Commercial Taxes-Cum-Secretary Commercial Taxes Department, Bihar, Patna
3. The Addl. Commissioner, Commercial Taxes (Vig.), Department of Commercial Taxes, Govt. of Bihar, Patna

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Mithilesh Kumar Rai, Advocate Mrs. Vandana Kishore, Advocate Ms. Kumari Ruchi, Advocate
For the Respondent/s	:	Mr.Ajay Kumar, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 21-03-2023 Heard learned counsel for the petitioner and Mr. Ajay Kumar, learned AC to GP-4 for the State.

2. The petitioner is aggrieved by and dissatisfied with the order as contained in Memo No. 141 dated 04.08.2011 (Annexure '12') by which the petitioner has been dismissed from service.

3. Learned counsel for the petitioner submits that the petitioner was an accused in the infamous fodder scam case being P.S. Case No. 43(A)/96. In the said case, he has been convicted by the learned trial court vide judgment dated 31.07.2007 and ordered to undergo maximum sentence of three years with a fine of Rs.70,000/-.



4. After his conviction and sentence in the said case, the petitioner was served with a show cause notice as contained in Letter No. 56/C dated 25.04.2011 (Annexure '9') calling upon him to show cause as to why an appropriate order of dismissal from service be not passed against him in exercise of power conferred under proviso to clause (2) under Article 311 of the Constitution of India.

5. Learned counsel submits that the petitioner submitted a detail reply as contained in Annexure '10' to the writ application but on mere perusal of the reply of the petitioner, it would appear that he had brought several materials to the notice of the competent authority but the competent authority has not at all looked into the reply of the petitioner.

6. Learned counsel further points out that the Joint Commissioner, Commercial Taxes Department, Government of Bihar put a note to the competent authority in which he recorded the salient features of the reply. In his proposal, he noted that while taking earlier approval from the competent authority, the show cause notice and reply of the officer was not available on the record which has been pointed out by learned Advocate General, hence, there is a need to obtain fresh approval of the Hon'ble Dy.CM and thereafter from the Hon'ble CM (through



Chief Secretary).

7. Learned counsel submits that on perusal of the impugned order (Annexure '12'), it will appear that it refers the fact that a show cause notice was issued to the petitioner and the petitioner has submitted a reply thereto but thereafter no discussion has been made on the reply of the petitioner and in a completely vague manner, it is stated that on analysis, the reply was not found fit to be accepted.

8. Learned counsel submits that an order of dismissal has got civil consequence. It has wide ramifications on the life of the petitioner, therefore, it was incumbent upon the competent authority to take into consideration the reply of the petitioner and deal with the same while passing the order of punishment.

9. Attention of this Court has been drawn towards the specific statements made in paragraph '5' of the supplementary affidavit. Copy of the supplementary affidavit has been served upon Mr. Ajay Kumar, learned AC to GP-4 for the State and he has accepted the same. In paragraph '5', the petitioner has stated examples of atleast 11 persons who, according to the petitioner, were convicted in the fodder scam cases. One of them namely, Ashok Kumar Singh who was Assistant Treasury Officer and a



co-convict of the petitioner in RC43(A)/96 is said to be getting the pension after having been approved by the Jharkhand High Court. There is no response to the statements made in the supplementary affidavit, therefore, this Court is not aware of the stand of the State on this score but on record, the petitioner has brought a copy of the order dated 18.10.2011 passed by a learned Co-ordinate Bench of this Court in **CWJC No. 7127 of 2010 (Ranjit Singh versus The State of Bihar and Others)**. In the said case also, the petitioner was dismissed from service in view of his conviction by the Special Judge, CBI at Ranchi in Mango P.S. Case No. 30/96/RC No. 23A of 1996. His appeal against the judgment of conviction was pending before the Hon'ble Jharkhand High Court. He cited discrimination in the matter of award of punishments. The learned Co-ordinate Bench noticed that the counter affidavit did not deny the assertions with regard to the fact that Shri Kunj Bihari Thakur and Shri Ashok Kumar Singh were either allowed to superannuate honourably or was still in service. The learned Co-ordinate Bench disposed of the writ application in the light of the judgment of the Hon'ble Supreme Court in the case of **Akhilesh Kumar Singh versus State of Jharkhand and Others** reported in **(2008) 2 SCC 74** with a direction to the respondents that they



will take necessary decision afresh.

10. Learned counsel for the State has though opposed this writ application and submits that the impugned order has been passed after giving a notice to show cause to the petitioner and upon considering his reply. Learned counsel further admits that so far as the statements made in Paragraph '5' of the counter affidavit are concerned, he has not sought any instruction on the same and in such circumstances, the judgment of the learned Coordinate Bench in the case of **Ranjit Singh** (supra) may be followed.

11. Having heard learned counsel for the petitioner and the State as also on perusal of the records, this Court finds force in the submission of the learned counsel for the petitioner to the extent that the reply submitted by the petitioner as contained in Annexure '10' to the writ application does not find any consideration in the impugned order. Only by stating in an ornamental language that the reply of the petitioner has been analyzed but has not been found fit, the respondents cannot be allowed to ignore their responsibility to go through the reply of the petitioner and deal with the same in accordance with law. A severe punishment which was proposed to the petitioner required a serious consideration to his reply.



12. This Court further points that the Hon'ble Supreme Court in the case of **Akhilesh Kumar Singh** (supra) has observed in Paragraph '15' as follows:-

“**15.** It is true that delinquent officers similarly situated should be dealt with similarly and, thus if the charges against the employees are identical, it is desirable that they be dealt with similarly.”

13. In the light of the aforesaid observation of the Hon'ble Supreme Court, the learned Coordinate Bench had been pleased to set aside the impugned order in the case of **Ranjit Singh** (supra) in the following words:-

“Let such consideration be done and disposed off by a reasoned and speaking order within a maximum period of two months from the date of receipt/production of a copy of this order along with a representation. Suffice it to only observe that a conviction under the Prevention of Corruption Act cannot be subjected to sub-classification. To facilitate the passing of such fresh order by the respondents the impugned order 12.03.2010 is set aside. It does not result in the reinstatement of the petitioner which shall necessarily have to abide by such fresh order that may be passed by the respondents.”

14.In the light of the discussions made hereinabove, to facilitate passing of a fresh order by the respondents, this Court sets aside the impugned order as contained in Annexure '12' to the writ application with a direction to the respondents to consider the reply of the petitioner as contained in Annexure '10' and also examine the averments



of the petitioner as regards the treatment given to some of the co-convicts/ accused in the fodder scam cases as stated in Paragraph '5' of the supplementary affidavit of the petitioner. Upon consideration of these materials, an appropriate view be taken by the competent authority. Let a fresh order be passed within a period of three months from the date of receipt/ production of a copy of this order.

15. As has been ordered by the learned Coordinate Bench in the case of **Ranjit Singh** (supra), this Court would also record that setting aside of the impugned order shall not result in reinstatement of the petitioner. The petitioner would be obliged to abide by the fresh order.

16. This writ application is disposed of in the aforementioned directions.

(Rajeev Ranjan Prasad, J)

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