

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.308 of 2023

In
Civil Writ Jurisdiction Case No.665 of 2021

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Birendra Kumar Mahto, Son of Babuji Mahto, Resident of Village and P.O.-
Khirhar Bazar, P.S.- Khirhar, District- Madhubani, at present R/o- House no.
15, Sarvoday Nagar, Road no. 01, East of Sant Karen s School, Gola Road,
P.S.- Rupasur, District- Patna, posted as the Labour Superintendent,
Kishanganj.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Assistant Chief Secretary, Labour Resources Department, Government of Bihar, Patna.
4. The Labour Commissioner, Labour Resources Department, Government of Bihar, Patna.
5. The Joint Secretary, Labour Resources Department, Government of Bihar, Patna.
6. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
7. The Deputy Secretary, Labour Resources Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr.Lakshmi Kant Sharma, Advocate
For the Respondent/s	:	Mr.Sarvesh Kr. Singh, AAG 13 Mr. Rajat Kumar Singh, AC to AAG 13

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-03-2024

The controversy in the above appeal is in a short
compass, the writ petitioner, appellant herein, was proceeded
departmentally and having found him guilty, was inflicted with



punishment of dismissal from service. The petitioner challenged the punishment before this Court wherein it was found that, at best, the allegation is only of an illegality or irregularity committed by the delinquent employee, in the matter of registration of an establishment; which was the misconduct alleged, for which dismissal from service is excessive. It was held that the punishment imposed was illogical and shocks the conscience of the court.

2. This Court in CWJC No. 11951 of 2017, by order dated 30.10.2018, set aside the order of dismissal and remanded the same to the authority to reconsider the penalty. Upon reconsideration, the punishment of reduction to a lowest stage in the time-scale of pay, dis-entitling the petitioner to promotion and increments, was passed by the authority.

3. The learned Single Judge found that there is substantial reduction of penalty since it was altered from dismissal, to reduction to a lowest stage in the time-scale of pay; granting the delinquent employee also the right to subsistence allowance during the interregnum he was not in employment due to the dismissal order. The learned Single Judge found that there is limited scope of interference with the quantum of punishment and there could be no substitution of a punishment



under Article 226 of the Constitution.

4. We heard Shri Ramakant Sharma, learned Senior Counsel for the appellant and Shri Sarvesh Kumar Singh, learned A.A.G.-13 for the State. We fully agree with the finding of the learned Single Judge that there could be no interference caused to the punishment imposed in a departmental enquiry by the disciplinary authority and there cannot be a substitution of the same by the High Court under Article 226. However, in the present case, we are of the opinion that the punishment awarded is not in accordance with the penalties as prescribed under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity 'Rules 2005').

5. We extract herein two of the major penalties, which empowers the disciplinary authority to impose the punishment of reduction to a lower stage in time-scale of pay i.e. Clause (vii) and (viii) of Rule 14.

“Rule 14(vii) Save as provided for in clause(iv), reduction to a lower stage in time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;
(viii) Reduction to a lower time-scale of pay, grade,



post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he or she was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service.”

6. As per Clause (vii)- if reduction is to a lower stage in time-scale of pay for a specific period, there could be further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction. In that circumstance, there could also be a direction to postpone the future increments of pay after the expiry of period specified.

7. Under Clause(viii)- the reduction to a lower time-scale of pay would ordinarily be a bar to the promotion of the Government servant to the scale from which he was down graded. The down grading could be with or without further directions for restoration of the status to the grade or post or service from which he was reduced, with restoration of his seniority and pay.

8. Both the penalties are of reduction to a lower stage, the further directions are distinct and different. When the reduction to a lower stage is for a specified period, then the



increments could be barred for the specified period and even the future increments, after expiry of the specified period, could be postponed.

9. When the reduction to a lower stage is made without specifying a period, after which the employee can be restored, then ordinarily, as per rule, there is a bar from further promotions. This order of reduction could be with or without further conditional directions for restoration earned to the earlier post.

10. Hence, when the reduction is made for a specified period, there could be withholding of increments but when the reduction is without a specified period; though it bars promotion, there is no provision to withhold increment.

11. In the present case, the appellant has been reduced to a lower rank without specifying a period, in which event without any further directions, the appellant would be barred from being promoted. However, the impugned penalty order not only bars the promotion but also withholds the increment permanently, which is not permissible under the rules.

12. In the above circumstances, we set aside the order of penalty and remand it to the authority to impose a penalty in accordance with the Rules, 2005.



13. The appeal stands allowed.

14. Interlocutory application, if any, shall stand disposed of.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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