IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.614 of 2021
In
Civil Writ Jurisdiction Case No.10729 of 2019

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1. The State of Bihar through Principal Secretary, Department of Registration Excise and Prohibition Govt. of Bihar, Patna.
2. The Commissioner and Inspector General of Registration, Department of Excise and Prohibition, Govt. of Bihar Patna.
3. The Secretary Department of Excise and Prohibition, Govt. of Bihar, Patna.
4. The Special Secretary, Department of Registration Excise and Prohibition, Govt. of Bihar, Patna.
5. The Deputy Secretary, Department of Excise and Prohibition, Government of Bihar at Patna.

... ... Appellant/s

Versus

Binod Kumar Jha S/o Late Hari Lal Jha (Dy. Commissioner, Bhagalpur Division (Retd.)) Resident of Araria P.S. and District- Araria.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sriram Krishna (A.C. To S.C.11)
For the Respondent/s : Mr.Suresh Pd Singh No.1

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

Date : 24-06-2024

The Appellant-State have filed the present LPA No. 614 of 2021 in assailing the order of the learned single judge dated 21.01.2021 passed in CWJC No.10729 of 2019. There is a delay of about 228 days in filing LPA. In the meanwhile, contesting Respondent-Binod Kumar Jha has filed MJC insofar as non-compliance of the order of the learned single judge dated 21.01.2021.

Re: I.A. No. 01 of 2024

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2. Heard I.A. No. 01 of 2024 for condonation of delay in filing LPA No. 614 of 2021. Even though sufficient cause has not been shown however, we intend to condone the delay of about 228 days in view of the fact that it is a State LPA and certain financial implications are involved in the present lis. Accordingly, I.A. No. 01 of 2024 stands allowed.

3. Heard learned counsel for the respective parties on merit on LPA. The Respondent-Binod Kumar Jha while working as Assistant Commissioner he had failed to take responsibility in curbing certain issues relating to number of people died while consuming spurious liquor and such incident was occurred in the year 2012 whereas the departmental enquiry has been initiated in the year 2015. On 31.01.2015, he has attained age of superannuation and retired from service.

4. Enquiry officer has exonerated the Respondent in a departmental inquiry. Resultantly, Sub-Rule 2 of Rule 18 of Bihar CCA Rules 2005 was required to be exercised by the disciplinary authority in issuing notice to the Respondent as to why he shall not disagreeing with the Enquiry officer’s report on particular counts. Such a notice has not been issued. On the other hand, disciplinary authority proceeded to impose penalty of withholding of forfeiting of 5 per cent pension under Rule 43

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(a) of Bihar Pension Rules on 15.02.2019.

5. In the meanwhile, for non-settlement of retiral benefits Respondent has invoked the remedy before this Court in CWJC No. 10729 of 2019. During pendency of the aforementioned writ petition, Appellant have filed counter affidavit while pointing out that Respondent was punished with forfeiting of five percent of pension in a departmental enquiry. Consequently, Respondent questioned the validity of punishment order dated 15.02.2019.

6. Learned Single Judge proceeded to pass order that the order of punishment dated dated 15.02.2019 was issued under Rule 43 (a) of Bihar Pension Rules and it is not a relevant provision and so also it is without jurisdiction. Thereafter, matter has been remanded to the authority for passing a fresh order. At this stage, Respondent-Binod Kumar Jha filed MJC contempt petition during pendency of the MJC State-appellant have preferred the present LPA.

7. Learned counsel for the Appellants-State submitted that learned single judge has committed error in quashing the penalty order dated 15.02.2019 on the score of jurisdiction. No doubt it is a true, however, authorities quoting a wrong provision does not vitiate order as held by the Hon’ble Supreme

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Court in umpteen number of cases. Therefore, to the above extent the learned single judge has committed error. Be that as it may, the impugned order dated 15.02.2019 is not sustainable on the score that disciplinary authority while disagreeing with the enquiry officer's report failed to adhere to Sub Rule 2 of Rule 18 of Bihar CCA Rules 2005. On this score, the impugned penalty dated 15.02.2019 is liable to be set aside. Accordingly, the order of the learned single judge stands modified.

8. Insofar as granting interest on gratuity amount is concerned, it is to be noted that departmental enquiry was pending consideration against the respondent. The respondents have taken about four years in completing the enquiry. Further, a defective order has been passed on 15.02.2019 to the extent of violation of Sub-Rule 2 of Rule 18 of Bihar CCA Rules 2005. Therefore, granting of 9 per cent interest on gratuity amount was also unreasonable. Further, the appellants have not implemented the orders of this Court dated 21.01.2021 passed in CWJC No. 10729 of 2019 and they have opened their eyes in filing LPA only as and when respondent has filed MJC contempt petition insofar as implementation of the order of this Court dated 21.01.2021 passed in CWJC No. 10729 of 2019. Further, we have noticed that LPA was filed in the year 2021 as on the

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date of filing LPA they are very much aware that there is delay in filing LPA whereas I.A. for condonation of delay has been filed after three years. There is a delay on the part of the appellants at every stage even in disciplinary proceedings as well as conducting case in the present court. Taking note of these facts and circumstances, we propose to modify the order of the learned single judge insofar as quashing the impugned penalty dated 15.02.2019 on the score that disciplinary authority failed to follow Sub-Rule 2 of Rule 18 of Bihar CCA Rules 2005 and not on jurisdiction or quoting a wrong provision, it is not appropriate to remand the matter at this distant of time for the reasons that subject matter of litigation is pending consideration from the date of allegation is more than one decade that apart, the respondent has attained age of superannuation and retired from service on 31st January 2015 and we are in the year 2024. Therefore, it is not a case for remanding the matter to the disciplinary authority to pass a fresh order. Insofar as payment of interest on gratuity is concerned, it is restricted at 8 per cent and Respondent is entitled to interest from the date of filing CWJC No. 10729 of 2019 till actual payment is made the same shall be calculated and disbursed. If it is already paid any gratuity amount, in that event, interest

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shall be calculated and disbursed within a period of three months from the date of receipt of this order.Withheld or forfeited 5% pension shall be released forthwith.With the above observations, LPA stands allowed in part.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

vashudha/-

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