
(2020) 01 PAT CK 0054

In the Patna High Court

Case No : Letters Patent Appeal No. 1145 Of 2019 In Civil Writ Jurisdiction Case No. 19322 Of 2018

Birendra Kumar Sinha

APPELLANT

Vs

State Of Bihar Through The Chief Secretary And Ors

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Citation : (2020) 01 PAT CK 0054

Hon'ble Judges : Hemant Kumar Srivastava, J;Prabhat Kumar Singh, J

Bench : Division Bench

Advocate : Amaresh Kumar Sinha, Ranjan Kumar, Sanjay Pandey, Anjani Kumar, Alok Kumar Rahi

Final Decision : Dismissed

Judgement

1. Heard learned counsel appearing for the appellant as well as learned AAG-4 appearing for the State.

2. The appellant is aggrieved by the order dated 08.08.2019 passed by learned Single Judge in CWJC No. 19322 of 2018 by which and whereunder learned Single Judge set aside the enquiry report as well as punishment awarded to the appellant and remanded the enquiry back to the Disciplinary Authority with direction to make a fresh enquiry and conclude the same within a period of six months.

3. The grievance of the appellant is that the learned Single Judge committed error in remanding the enquiry to the Disciplinary Authority directing the concerned authority to make fresh enquiry and, furthermore, the grievance of the appellant is that the concerned authority has not even issue show-cause to the appellant as yet, particularly, in the circumstance when near about five months have already elapsed from the date of passing order dated 08.08.2019 in CWJC No. 19322 of 2018.

4. Learned counsel appearing for the appellant submits that learned Single Judge

found that there was no evidence against the appellant, but in spite of that learned Single Judge remitted the enquiry to Disciplinary Authority with direction to make fresh enquiry. Learned counsel for the appellant further submits that learned Single Judge at para 5 of the impugned judgement has noted that except the report there was no other material for proving the guilt of the appellant, but even then the learned Single Judge remitted the matter to the Disciplinary Authority. Learned counsel for the appellant further submits that the appellant is a retired person and he has already suffered a lot and, therefore, in the aforesaid circumstance the order of remand passed by the learned Single Judge must be set aside.

5. On the other hand, learned AAG-4 appearing for the State refuted the above-stated submissions arguing that even if it is assumed that there was only a report against the appellant, but admittedly the learned Single Judge directed the Disciplinary Authority to take statement of report maker and, therefore, it cannot be said that there was no material against the appellant. Learned AAG-4 further submits that the learned Single Judge directed to conclude the departmental proceeding within six months from the date of receipt/production of copy of the order dated 08.08.2019 and the time as fixed by the learned Single Judge has not elapsed as yet. Learned AAG-4 further submits that the departmental proceeding shall be concluded expeditiously without further delay, if the appellant cooperates in the proceeding.

6. Having heard the contentions of the parties, we went through the record and we find that learned Single Judge noted that except a report, there was no material against the appellant, but simultaneously, the learned Single Judge also noted that the report maker was not examined and without recording his statement the concerned authority held the appellant guilty and awarded punishment to him. It would appear from the impugned judgment that learned Single Judge having taken note of the aforesaid fact, set aside the enquiry report as well as punishment awarded to the appellant and remitted the matter to the Disciplinary Authority for proceeding afresh with direction to conclude the aforesaid proceeding within a period of six months from the date of receipt or production of the order. Furthermore, we find that the period as fixed by the learned Single Judge has not been elapsed as yet and, therefore, the appellant cannot claim that the concerned authority failed to conclude the proceeding within the period as fixed by the learned Single Judge.

7. So far as order of remand is concerned, we do not think it proper to interfere into the order of remand as passed by the learned Single Judge vide impugned judgment because the learned Single Judge noted that the report maker was not examined by the Disciplinary Authority. Therefore, in the aforesaid circumstance, we have no option except to dismiss this Letters Patent Appeal and, accordingly, this Letters Patent Appeal stands dismissed. However, the respondents (concerned authority) must conclude the proceeding of the appellant within the period as fixed by the learned Single Judge vide order dated 08.08.2019 passed

in CWJC No. 19322 of 2018. However, it is made clear that if the concerned authority fails to conclude the proceeding of the appellant within the period as fixed by learned Single Judge, the appellant shall be at liberty to pray before the court for quashing the proceeding initiated against him.