

(2016) 10 PAT CK 0071

In the Patna High Court

Case No : Letters Patent Appeal No. 1060 of 2014; (Arising out of Civil Writ Jurisdiction Case No. 8596 of 2013)

Sita Ram

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 28-10-2016

Acts Referred:

Citation : (2017) 1 BBCJ 64 : (2016) 4 PLJR 901

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Ram Yash Singh and Mr. Shambhu Nath Jha, Advocates, for the Appellant; Mr. Krishna Kumar Singh, AC to GP-22, for the State

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, J.(Oral) - The order dated 2nd May, 2014 passed by the learned Single Bench of this Court is subject matter of present Letters Patent Appeal wherein challenge to the order of punishment of stoppage of one increment for a period of one year remained unsuccessful.

2. It was on 11th September, 2010, the appellant was imposed punishment of stoppage of one increment for a period of one year. Subsequently, the appellant was promoted as Deputy Superintendent of Police and attained the age of superannuation on 31st January, 2013.

3. The learned Single Bench found that the order of punishment has not come in the way of the appellant for promotion to the next higher post and, therefore, the appellant cannot be said to have suffered any prejudice which may entitle him to invoke the writ jurisdiction of this Court.

4. Learned counsel for the appellant before this Court argued that his promotion was delayed for a period of one year and that the order of punishment is actuated by mala fides. Therefore, he is entitled to invoke the writ jurisdiction of this Court.

5. We have heard learned counsel for the appellant and find no cause to interfere in the Letters Patent Appeal against an order passed by the learned Single Bench. The argument of the appellant that the punishment was imposed by the competent authority who acted in a mala fide manner. However, the person against whom the appellant is said to have suffered mala fide has not been impleaded as a party. Therefore, such an argument does not warrant any consideration.

6. Learned counsel for the appellant points out that the State Government is the appointing authority of the appellant in view of the fact that he was promoted as Deputy Superintendent of Police vide communication dated 28th July, 2010 but on account of punishment imposed in the month of September, 2010, his promotion was delayed. Since the State Government is the appointing and punishing authority, therefore, punishment imposed by the Deputy Inspector General of Police is not sustainable.

7. We do not find any merit in the said argument. Para 824A(b) of Chapter 25 of the Bihar Police Manual, 1978 is to the effect that the action against Deputy Superintendents and their equivalent ranks shall be taken according to Civil Services (Classification, Control and Appeal) Rules, 1930. Since the appellant has not joined as Deputy Superintendent on the day punishment was imposed, therefore, the action can be taken against him according to the Bihar Subordinate Services (Discipline and Appeal) Rules, 1935 and the D.I.G. is competent to impose punishment. The relevant Clause reads as under:-

"824A. (a) Disciplinary action against members of the Indian Police Service shall be instituted according to All India Services (Discipline and Appeal) rules, 1969.

(b) Action against Deputy Superintendents and their equivalent ranks shall be taken according to Civil Services (Classification, Control and Appeal) Rules, 1930.

(c) Action against ministerial officers shall be taken according to Bihar Subordinate Services (Discipline and Appeal) Rules, 1935.

(d) The rules concerning members of Bihar Sashastra police are given in a separate Manual.

(e) For experts and other ranks, action shall be taken according to sub-rule (b) above, if gazetted, and according to sub-rule (c), if nongazetted, unless expressly proposed otherwise for any special person. Inspectors of Police are not included in Civil Services (Classification, Control and Appeal) Rules although they are of gazetted rank and rule 824 shall be applicable to them like other Police Officers who are recruited according to Police Act, 1861.

825. Officers empowered to impose punishment - (a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him.

(b) The Inspector-General may award to any police officer below the rank of

Deputy Superintendent any one or more of the punishments in rule 824.

(c) A Deputy Inspector-General may impose on any police officer subordinate to him and below the rank of Deputy Superintendent any of the punishments in rule 824 except dismissal, compulsory retirement and removal in the case of an Inspector".

8. Though, a communication was issued for promotion of the appellant but the appellant had not joined as Deputy Superintendent of Police before the order of punishment was imposed. Therefore, he would be part of the ministerial officers cadre governed by Bihar Subordinate Services (Discipline and Appeal) Rules, 1935. Para 825 defines the authority who are competent to impose punishment. The restriction in such para is in respect of punishment of dismissal or compulsory retirement which can be imposed only by the appointing authority. Since the punishment was minor, the same could have been imposed by the D.I.G., even if the punishing authority is the State Government.

9. In view thereof, we do not find any merit which may warrant interference in the present Letters Patent Appeal. The same is accordingly, dismissed.