

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) .4394 OF 2007

CHANDRESHWAR MISHRA . . . APPELLANT(S)

VERSUS

STATE OF BIHAR & ORS. . .RESPONDENT(S)

O R D E R

Heard learned senior counsel for the appellant and learned counsel for the respondents.

This appeal is arising out of the judgment and order setting aside the order dated 17.01.2002, passed by the learned Single Judge in writ application filed under Articles 226 and 227 of the Constitution of India, wherein the Division Bench, after adverting to the relevant facts and relevant legal contentions, has held that the order of remand passed by the learned Single Judge to reconsider the question of punishment

was erroneous. The Division Bench, in our considered view recorded valid and cogent reasons after perusing the relevant records, having regard to the finding of fact recorded and the acts of the misconduct and the charge levelled against the appellants. The Division Bench held that the learned Single Judge has exercised judicial review power erroneously while holding that the order of dismissal passed against the appellant is disproportionate to the gravity of misconduct proved. The Division Bench has adverted to the charges with regard to the regularisation of 38 Warders without waiting for the approval of the I.G. (Prison).

Learned senior counsel appearing for the appellant contends that the appointing authority of the Warders is the Superintendent of Jail, the appellant herein and there is no need to take the approval of the I.G.(Prison). This contention cannot be accepted for the reason that the appellant has written letter dated 16.08.1992 to the I.G.(Prisons), Bihar, Patna, seeking permission from him to regularise the services of 38 warders, which approval was awaited. Without receiving the permission from the I.G.(Prisons), after the order of

transfer dated 16.12.1992, the regularisation order was passed by the appellant. That was found fault with by the disciplinary authority while initiating disciplinary proceedings by framing certain charges. The charges found proved is the finding of fact recorded by the learned Single Judge. The correctness of the finding recorded by learned Single Judge with regard to the validity of domestic inquiry was questioned in the letters patent appeal. Letters patent appeal against the order of remand passed by the learned Single Judge in the writ petition filed by the writ petitioner-respondent, appellant herein, was considered and held against the appellant by recording valid and cogent reasons having regard to the nature of misconduct alleged are proved by the disciplinary authority. Therefore, the finding recorded on the validity of domestic inquiry held by the disciplinary authority is not an issue and the same has attained finality as the appellant did not challenge that portion of the order of the learned Single Judge. The order passed in letters patent appeal was challenged before this Court.

Learned senior counsel appearing on behalf of the

appellant has placed strong reliance upon Article 320(3)(c) of the Constitution read with Rules of Executive Business (State of Bihar) under Article 166(3) of the Constitution of India. Per contra, it is brought to our notice by the learned counsel appearing on behalf of the State that before passing an order of dismissal against the appellant, consultation with the Bihar Public Service Commission was made and proceeded in accordance with law and the same was in conformity with the constitutional provisions abovementioned.

I.A. No. 3 has been filed for disposal of the matter and seeking exemption from filing a separate special leave petition against the judgment and order passed by the High Court. Such a relief cannot be granted by this Court for the reason that he was required to independently file special leave petition or he could have challenged the same seeking permission in this appeal itself. That has not been done. Having regard to the facts and circumstances of the case, we are not inclined to allow the prayers made in I.A. No.3 in exercise of our power under Article 142 of the Constitution.

We are in agreement with the findings and reasons recorded by the learned Division Bench of the High Court after applying its mind and from perusal of the inquiry record and satisfying the nature of acts of misconduct alleged and proved against the appellant does not warrant to impose lesser punishment than the one passed against him by the disciplinary authority. We do not find any good reason whatsoever to interfere with the impugned judgment and order in exercise of our power under Article 136.

In view of the above, the appeal must fail and consequently all the applications which are pending, also dismissed.

.....J.
(V. GOPALA GOWDA)

.....J.
(ADARSH KUMAR GOEL)

NEW DELHI,
JULY 29, 2015

ITEM NO.110

COURT NO.10

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4394/2007

CHANDRESHWAR MISHRA

Appellant(s)

VERSUS

STATE OF BIHAR & ORS.

Respondent(s)

(with appln. (s) for exemption from filing O.T. and office report)

Date : 29/07/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Mr. S. Balakrishnan, Sr. Adv.
Mr. Bankey Bihari, Adv.
Mr. Shree Narain Jha, Adv.

For Respondent(s) Mr. Gopal Singh, Adv.
Mr. Manish Kumar, Adv.
Mr. Chandan Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Pending applications(s), if any, also stand dismissed.

(VINOD KR.JHA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)