
(2007) 09 PAT CK 0140
In the Patna High Court
Case No : CWJC No. 7314 of 2005

Akhil Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Citation : (2008) 1 PLJR 215

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for petitioner, learned counsel appearing for Siwan Nagarpalika Parishad and learned counsel for the State. Petitioner has challenged Annexure-1 dated 18.1.2002. By this order the special officer has directed for recovery of Rs. 1000/- per month from the salary of petitioner which had to add up to Rs. 33,397/- i.e. the total amount for recovery. There is yet another person, namely, Babar Ali and Rs. 3,507/- has been ordered to be recovered from him.

2. The basic background leading to passing of the present order is that one Smt. Laxhaminia Devi who was working under the respondents as sweeperess was supposed to superannuate from service on 31.7.2000 which is as per the service record of said Laxhaminia Devi. Petitioner states that as per the roster register prepared in the year, 1984 the said Laxhaminia Devi was to superannuate in the year, 2010 but that is not the issue as such. On the basis of entry in the service book the said Laxhaminia Devi ought to have retired from service on 31.7.2000 but she continued to work till 27.8.2001. When this fact was discovered the respondents treated it to be a case of negligence on the part of petitioner who was a dealing assistant and incharge of the establishment. The respondents in their wisdom therefore decided to recover from the petitioner in proportion to the salary which was paid to Laxhaminia Devi beyond her age of superannuation and in this background Annexure-1 came to be passed.

3. Petitioner's case is that he was given charge of the establishment as establishment clerk on 9.9.2000. When he took charge the previous incumbent had already drawn up the establishment expenses for the year, 2000-01 and in that the name of said Laxhaminia Devi figured. When the petitioner started preparing the establishment expenses for the year 2001-02 he discovered the fact that said Laxhaminia Devi ought to have retired on 31.7.2000 and quickly pointed out the same to the competent authority. It was in this background that Laxhaminia Devi was made to retire on 27.8.2001.

4. Petitioner has given his detailed explanations in this regard which are contained in Annexures-2, 3 and 4. He has categorically stated that there was no omission and commission on his part which led to the said situation. His act was also not deliberate. He states that since he took charge only on 9.9.2000 and the said Laxhaminia Devi was to retire on 31.7.2000, it was incumbent on the previous person holding charge of the establishment to have indicated the position to the authority. If for his mistake the said Laxhaminia Devi was allowed to continue then the petitioner cannot be saddled with the liability. The charge against the petitioner at best is a case of oversight in the given background. For a case like this and in the circumstance explained by him he cannot be punished. Further the submission is that the respondent authority never held any enquiry for the fact finding in the matter as such so he cannot be awarded punishment. The respondents took a simple way out and saddle the petitioner with heavy liability of Rs. 33,397/-.

5. The respondents have filed counter affidavit. In the counter affidavit they have stated that the respondents have suffered due to negligence and mistake of one Babar Ali and petitioner. They have stated that said Laxhaminia Devi continued in service while petitioner was incharge of establishment therefore, proportional recovery has been made from him and the said Babar Ali. The respondents have stated that obviously petitioner was the establishment clerk and was custodian and incharge of the service book it was his duty to point out the above fact at the earliest.

6. When an employee is visited with a civil consequence and a liability of Rs. 33,397/- has been created on his head, something more was required to be done by the respondents. Mere stating the obvious is not enough. From perusal of the entire records there was nothing to show that the respondents have in any manner enquired into the matter and demonstrated that there was a deliberate effort on the part of petitioner to cause of any illegal gain to the said Laxhaminia Devi. More so since the petitioner took charge of establishment after the date of superannuation of Laxhaminia Devi and the persons incumbent had already made allocation for her at the relevant time, the petitioner obviously went with record. Further it was the petitioner who on deeper enquiry, while preparing the expenses for the next year, discovered this aspect and pointed out the illegal continuance of Laxhaminia Devi and after that she was removed from service. Now this is being held out against the petitioner without due domestic enquiry.

7. It is well established by the Courts that mere-omission or inaction at time and that too in the background may not be enough to saddle an employee and visit him with a civil consequence. The respondents have taken an easy way out in the matter and have ordered recovery from petitioner even without fixing his culpability or motive in this regard. Annexure-1 also does not indicate that the respondents had applied themselves to the issue and have in any manner considered the explanation which was offered by petitioner in this regard. The order therefore also suffers from the vice of non-application of mind.

8. In the given facts and circumstances this Court is of the opinion that the respondents have illegally ordered deduction from salary of petitioner amounting to Rs. 33,397/-. The order is accordingly quashed in so far as it relates to petitioner.

9. Petitioner has categorically stated in paragraph 16 of the writ application that the entire amount has already been recovered from him. If this is so then the respondents are directed to refund the same forthwith.

10. Learned counsel for the respondents on completion of the submission as last desperate measure seeks liberty by the Court to enquire into the matter afresh to fix responsibility. This Court has no occasion to express any opinion in this regard. The respondents are free to go by any legal advice which may be available to them. This writ application is allowed.