

(2015) 04 PAT CK 0066
In the Patna High Court
Case No : CWJC No. 2824 of 2008

Akhileshwar Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 PLJR 719

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Akhilesh Kumar Sinha and Madanjeet Kumar, for the Appellant;
Mayank Rukhiyar, for the Respondent

Final Decision : Partly Allowed

Judgement

Rakesh Kumar, J.—Heard Sri Akhilesh Kumar Sinha and Sri Madanjeet Kumar, learned counsel for the petitioner and Sri Mayank Rukhaiyar, learned A.C. to Govt. Advocate-1. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for following reliefs:--

1. For issuance of a writ in the nature of Certiorari for quashing the order dated 16.9.2005 passed by the Respondent No. 3 as contained in Annexure-13 to this writ petition which has been communicated to the petitioner vide memo No. 390 dated 29.9.2005 whereby and whereunder he has passed the following order pursuant to examining the enquiry report of the conducting officer and the order passed by the Respondent No. 4 thereupon:--

(i) Since the petitioner willingly absented from duty between 2.8.77 to 14.1.93 hence the said period would be treated to be break in service.

(ii) Since the petitioner was not on duty due to non-acceptance of his joining during the period intervening between 15.1.93 to 13.8.1995 hence on the basis of no work no pay he would not be entitled for any payment. However, the said period would not be treated as break in service.

(iii) The period intervening between 14.8.95 to 29.8.95 shall be treated as the period spent as compulsory waiting for posting.

(iv) The period intervening between 30.8.95 to 4.9.98 during which the petitioner remained under suspension he shall be entitled only for the subsistence allowance.

(v) The period intervening between 5.9.96 to 8.8.97 shall be treated as period spent on leave without pay on the principle of no work no pay. However the said period would not be deemed as break in service.

2. For issuance of a writ in the nature of mandamus directing and commanding the respondent to pay him full salary and other emoluments with effect from 15.1.1993 to 8.6.1997 as well as to sanction his leave without pay with effect from 3.8.1997 to 14.1.1993 i.e. after his earned leave and grant him the consequential relief.

3. To grant any other relief or reliefs to which the petition is found entitled to in the facts and under the circumstances of the case.

2. Short fact of the case is that the petitioner was initially appointed as Junior Accounts Clerk in the Rural Engineering Organisation (R.E.O.), Sasaram Division. The case of the petitioner is that he continued to work on the said post till 31st July, 1977 and suddenly, on 1st August, 1977, he suffered severe attack of paralysis and thereafter, he remained absent for about 15 & 1/2 years from the service. Of course, a plea was taken that from time-to-time he was sending letters for extension of his leave period, finally when he recovered and got medical fitness certificate on 13.1.1993, he submitted his joining on 15.1.1993. However, the petitioner was not allowed to join and finally the petitioner approached this Court by filing a writ petition, vide C.W.J.C. No. 10418 of 1994 (Annexure-"1" to the writ petition). This Court by its order dated 11.7.1995 allowed the writ petition and directed the respondents to accept joining of the petitioner within two weeks of the receipt of a copy of the order. This Court further observed that respondent will be entitled to initiate a departmental proceeding and pass such order of punishment as may deem fit and proper. Thereafter, the Superintending Engineer, Rural Engineering Organisation, Works Division, Sasaram (respondent No. 4), vide its letter No. 263 dated 14.8.1995 (Annexure-"3"), accepted the joining of the petitioner in compliance with the order of the writ court. Immediately thereafter, vide Annexure-"4" to the writ petition i.e. letter No. 264 dated 14.8.1995, the petitioner was noticed to give his show cause regarding his unauthorized absence from duty for about 15 & 1/2 years. The petitioner was subsequently put under suspension, vide Memo No. 285 dated 30.8.1995 (Annexure-"5" to the writ petition), thereafter, departmental proceeding was initiated against the petitioner and finally, vide Annexure-"6" i.e. Memo No. 273 dated 4.9.1996, the disciplinary authority i.e. Superintending Engineer, R.E.O./respondent No. 4 on the humanitarian ground revoked the order of suspension w.e.f. 4.9.1996 and imposed punishment i.e. (i)

from 2.8.1977 to 13.8.1995 he can be sanctioned leave without pay subject to approval of the competent authority, & (ii) warning was directed to be recorded in A.C.R. so that he may not repeat the same misconduct. Keeping in view the fact that in the office of the Superintending Engineer, R.E.O., there was no vacant post of Junior Accounts Clerk, there was no possibility for adjustment of the petitioner and as such, the petitioner was asked to give his joining in the office of the Chief Engineer. The petitioner, thereafter submitted his joining in the office of Chief Engineer, R.E.O., Bihar on 6.9.1996, but subsequently, the petitioner was posted as Junior Accounts Clerk in the office R.E.O., Work Sub-Division, Kudra vide office order No. 247 dated 3.6.1997 issued by the Deputy Secretary and the petitioner submitted his joining thereafter. Subsequently, the petitioner filed representation before the respondent No. 4 requesting therein to treat him on leave without pay w.e.f. 3.8.1977 to 14.1.1993 adjusting the Earned Leave to the said period and other relief. However, since no decision was taken on his representation, he again filed the writ petition, vide C.W.J.C. No. 5120 of 1999 before this Court claiming full salary and other admissible amount w.e.f. 15.1.1993 to 8.6.1997 and other relief. However, this Court by its order dated 7.10.2004 disposed of the writ petition directing the petitioner to represent his case afresh before respondent No. 3/the Chief Engineer, R.E.O., who was directed to consider the grievance of the petitioner and dispose of the same by speaking order within a period of three months. Finally, the impugned order has been issued by the Chief Engineer, R.E.O. on 16.9.2005 (Annexure-"13" to the writ petition), which is under-challenge.

3. Learned counsel for the petitioner, assailing the impugned order, has argued that once in a departmental proceeding, punishment order was passed by the disciplinary authority, at subsequent stage, the Chief Engineer, who was directed to dispose of the representation of the petitioner, was not entitled to inflict further punishment. It has been argued that this Court by its order dated 7.10.2004 passed in C.W.J.C. No. 5120 of 1999 (Annexure-"10") had directed the Chief Engineer to consider the representation of the petitioner, which was obviously filed for regularizing the period of service, claiming admissible emoluments w.e.f. 15.1.1993 to 8.6.1997 and sanction of leave w.e.f. 3.8.1977 to 14.1.1993 after adjusting the leave and to grant all consequential benefit. It has been argued that save & except regularizing the period, which was directed by the disciplinary authority, vide Annexure-"6" to the writ petition, no further punishment order was required to be passed by the Chief Engineer.

4. Sri Mayank Rukhaiyar, learned A.C. to Govt. Advocate-1 has vehemently opposed the prayer of the petitioner. At the very outset, he submits that for about 15 & 1/2 years the petitioner initially remained absent and as such, he was legally not entitled to be taken back into service, however; in view of order passed by this Court in C.W.J.C. No. 10418 of 1994 on 11.7.1995, the petitioner was allowed to join, however; this Court had granted liberty to the respondents to initiate departmental proceedings against the petitioner and after departmental proceeding, punishment was inflicted on the petitioner, vide

Annexure-"6" to the writ petition, however; since the punishment order was silent on the point of period of suspension of the petitioner and no final order was passed in respect of regularizing the service of the petitioner from 2.8.1977 to 13.8.1995, the Chief Engineer, vide Annexure-"13" to the writ petition has simply corrected the error, which had occurred in the earlier order of punishment. He has referred to averment made in the counter affidavit and submits that the order impugned is a detailed order and assigns specific reason for clarifying the punishment order.

5. Besides hearing learned counsel for the parties, I have also perused the materials available on record. So far as joining of the petitioner after about 15 & 1/2 years is concerned, that has already been set at rest by this Court by order dated 11.7.1995 passed in C.W.J.C. No. 10418 of 1994. Once this Court had allowed the petitioner to join, even after 15 & 1/2 years and in compliance with the order of the writ court, petitioner's joining was accepted, the Court is of the opinion that the Superintending Engineer, R.E.O. has committed serious error in treating the period of absence as break in service of the petitioner. Once this Court allowed the petitioner to join, there is no question to treat the said period as breakage in service. Moreover, in the departmental proceeding the disciplinary authority had not passed such punishment order, vide Annexure-"6" to the writ petition. At the time of considering the representation of the petitioner, which was filed for regularizing the period of service, there was no occasion for the Chief Engineer to pass an order mentioning therein to treat the period of absence as break in service. This amounts to imposing a punishment, which has not been passed in a departmental proceeding. The departmental proceeding in respect of unauthorized absence against the petitioner had already come to an end after the order of punishment by the disciplinary authority on 4.9.1996, vide Annexure-"6" to the writ petition. The second error, which has been committed by the Chief Engineer is that he has again imposed a punishment of forfeiture of salary of the petitioner during his suspension period, which was not done by the disciplinary authority. Of course, the disciplinary authority in its earlier order (Annexure-"6") was silent on the point of forfeiture of salary during the suspension period. If in the departmental proceeding, no such punishment was imposed, it would be deemed that the petitioner was entitled to get salary during the period of suspension after adjusting the subsistence allowance. Accordingly, this part of order of Annexure-"13" is also liable to be set aside and is hereby set aside.

6. So far as period of regularisation is concerned, which has been done by the Chief Engineer, the Court considers that there is no error in the remaining part of the order.

7. Accordingly, the order contained in Annexure-"13" in paragraph 12(i) & 12(iv) are hereby set aside. It is declared that the period between 2.8.1977 to 14.1.1993 shall not be treated as break in service of the petitioner and respondents are directed to regularize this period in accordance with law. The

respondents are further directed to pay the salary to the petitioner during the suspension period after adjusting the subsistence allowance. The remaining portion of the order contained in paragraphs 12(ii), 12(iii) & 12(v) shall remain as it is. The respondents are directed to take steps to regularize the service during the period indicated above and pay the salary after adjusting the subsistence allowance during the period of suspension within a period of three months from the date of receipt/production of a copy of this order. The writ petition stands partly allowed.