
(2002) 09 JH CK 0049
In the Jharkhand High Court
Case No : CWJC No. 3119 of 1995 (R)

Arun Kumar Pandey

APPELLANT

Vs

Ranchi Municipal Corporation and Others

RESPONDENT

Date of Decision : 27-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 09 JH CK 0049

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Jai Prakash, Arshad Hussain, Parmeshwar Prasad and Ajay Kr. Sinha, for the Appellant; Rai Rajat Nath, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. Jai Prakash, learned counsel for the petitioner and Mr. Rai Rajat Nath, advocate, on behalf of the Ranchi Municipal Corporation.

2. From the order sheets of this case it is apparent that on 23.1.1996 this writ application was admitted for hearing and thereafter, the office forwarded a copy of the order to the Administrator, Ranchi Municipal Corporation, Ranchi for information etc. However, while admitting the writ application one of us recorded that since all the respondents had already entered appearance and filed counter-affidavit, no notice therefore, need to be issued. Subsequently, on 10.12.1997 the office requested the Filing Section to report whether counter-affidavit had been filed as per order No. 3 and on 11.12.1997 the endorsement made in the order sheet shows that counter-affidavit had not been filed. This case was taken up for hearing on 19.9.2002 and in the presence of the learned counsel for the respondents it was directed that the case would be placed after one week as a part heard matter and in the mean time, the office was directed to trace out any such counter-affidavit that may have been filed in this case. However, no such counter-affidavit had been filed and therefore office note dated 11.12.1997, to the effect that no counter-affidavit had been filed in this case, is accepted. The

case is therefore, now taken up finally.

3. On 1st July, 1988 the Government, in exercise of powers conferred by Sub-section (2) of Section 62 of the Patna Municipal Corporation Act. 1951 published a notification directing inter alia, that the rules specified in the schedule appearing therein shall apply to the officers and servants of the Municipal Corporation with such adoption and modifications as mentioned therein. From a perusal of the schedule of the said notification, it is provided that Chapter III including other chapters of the Bihar Service Code shall apply. In other words, Chapter III of the Bihar Service Code shall apply to the Officers and servants of the Municipal Corporation.

4. Chapter III of the Bihar Service Code consists of Rule 52 to 76 and Rule 73 reads as follows :

"The date of compulsory retirement of a Government servant is the date on which he attains the age of 58 years. He may be retained in service after the date of compulsory retirement with the sanction of the State Government on public grounds, which much be recorded in writing."

5. In the instant case, irrespective of the aforementioned provisions to the effect that the age of superannuation shall be 58 years, the respondent Municipal Corporation came out with an office order on 20.6.1992 making the length of service of 40 years or 58 years as a criteria for superannuation. On the basis of the aforementioned office order, the letter "dated 6.4.1993 was issued to the petitioner Arun Kumar Pandey by which he was informed that a safai mazdoor namely, Smt. Nanhu Gutia should have retired on 5.10.1990 on the basis of her entry into the service as recorded in the service Book (meaning thereby 40 years of length of service). However, it was alleged that on the basis of negligence on the part of the petitioner the aforementioned employee continued till May, 1992 as a result whereof the Corporation had to pay salary etc. to her. Accordingly, the Administrator, Ranchi Municipal Corporation directed deduction @ of Rs. 500/- from the salary of the petitioner from March, 1993. The aforementioned letter/order is impugned and forms the subject-matter of this writ application.

6. Mr. Jai Prakash, learned counsel for the petitioner has submitted that the aforementioned order is clearly illegal inasmuch as the order has been passed without any show cause, without any notice and without following any of the rules relating to passing of orders which are punitive in nature. Mr. Jai Prakash, learned counsel for the petitioner has further argued that the only charge against the petitioner is negligence but the order does not show as to in what manner the petitioner was negligent. Negligence in the instant case has to be proved to be a direct cause for the alleged loss suffered by the Corporation. Mr. Jai Prakash, learned counsel for the petitioner further argues that the decision (Annexure 1) apart from being totally illegal and contrary to the provisions as contained in the Bihar Service Code also cannot be given retrospective effect. In the instant case the impugned order shows that the allegation is that Nunhu

Gutia should have retired on 5.10.1990 but she was allowed to continue till May, 1992 on the account of negligence on the part of the petitioner. Thus, on the date she was supposed to retire, Annexure 1 was not even in existence. There appears to be sufficient force in what Mr. Jai Prakash, learned counsel for the petitioner has argued. Merely, by flinging an allegation of negligence does not prove that a person is negligent. Additionally, negligence has to be proved and interpreted by evidence. It has to be shown as a matter of fact that the negligence alleged was such that the negligence was directly responsible for an event which took place to the prejudice of the body or the Corporation or the employer. In the instant case no such finding is there. Mr. Jai Prakash, learned counsel for the petitioner has relied upon the case of Parmanand Sharma v. Bihar State Road Transport Corporation reported in 2002 (2) JCC 279 (Jhr) in support of the aforesaid contention. "Negligence" by itself does not amount to a misconduct unless the factors leading to such negligence establishes beyond doubt that it was because of such negligence that was responsible for causing the happening of an event/situation causing grave loss. In the instant case, what was the nature of neglect has not been established. By merely saying that the petitioner's negligence caused the loss is not enough.

7. Additionally, the impugned order itself shows that Nanhu Gutia continued to work. In other words, it shows that the respondents continued to take work from her. If they took work from her, they were bound to pay her salary. In that view of the matter there is no justification as to why the amount paid to her should be ordered to be recovered from the petitioner. The order suffers totally from non-application of mind and is thoroughly and completely illegal.

8. For the reasons stated above, the impugned order is set aside and the respondents are directed to refund the amounts that they may have deducted pursuant to the impugned order together with interest at the present market rate and the costs which is quantified at Rs. 5000/-.

9. With the aforementioned observations/directions this writ petition is allowed. There shall be no order as to costs.