(2007) 12 PAT CK 0005

In the Patna High Court

Case No : CWJC No. 6691 of 2005

Awadhesh Prasad APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:
Constitution of India, 1950 — Article 14, 16

Citation : (2008) 1 PLJR 269

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Vishnudeo Narayan and Kamla Lal Shrivastava, for the Appellant; M.K. Thakur, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner and the State. Petitioner, who superannuated as Joint Commissioner, Commercial Taxes, has challenged the notification, bearing No. 136 dated 22.3.2005, Annexure-11 to this application, whereunder his pension to the extent of 10% has been withheld with further direction that he shall not be allowed the arrears of salary beyond the subsistence allowance for the period of suspension i.e. 24.11.1997 to 5.4.1999. The order has been passed by the State Government in the purported exercise of powers contained in Rule 43(b) of the Bihar Pension Rules.

2. Learned counsel for the petitioner has challenged the aforesaid order, Annexure-11 on two grounds of violation of natural justice as also lack of materials on records of the proceeding to differ with the findings recorded by the Enquiry Officer as before recording impugned punishment order, departmental proceeding was conducted with respect to the charge-sheet dated 31.10.1998, contained in Annexure-12 by the Enquiry Officer the Departmental Enquiry Commissioner, who exonerated him of the charges leveled under report dated 12.6.1999, Annexure-2, whereafter without even giving any opportunity to the petitioner, report dated 12.6.1999 was set aside by the State Government and

the matter was again remitted back to the another Departmental Enquiry Commissioner, who also after thorough enquiry, submitted report dated 1.7.2004, Annexure7 exonerating the petitioner. The State Government thereafter considered the second enquiry report dated 1.7.2004 and issued second show cause notice dated 4.11.2004, Annexure-9 and thereunder differed with the findings recorded in the enquiry report dated 1.7.2004 and called upon the petitioner to file show cause reply as to why he be not punished. Petitioner submitted his reply which is dated 16.11.2004, Annexure-10 and thereunder refuted the reasoning formulated for the purpose of differing with the findings recorded in the second enquiry report. It was categorically stated in the reply that reason cannot be supported by the materials available on the records of the departmental proceeding. The State Government considered the second enquiry report reasoning formulated to differ therewith and the second show cause reply and thereafter passed the impugned punishment order, bearing Notification No. 136 dated 22.3.2005, Annexure-11 withholding 10% of the pension as also the arrears of salary for the suspension period beyond the subsistence allowance.

3. For better appreciation of the submission raised by the counsel for the petitioner, it is necessary to have a look of the charge-sheet. Charges framed in Form-Ka was appended with the resolution of the State Government dated 31.10.1998, wherefrom it appears that as many as four charges with various sub-charges have been framed, which the second Enquiry Officer in his report has categorized ''in three categories, namely, Ka, Kha and Ga. Category Ka relates to violation of the different circulars and instructions issued by the State Government dated 8.8.1990, including other circulars for issue of different statutory forms. Category Kha is based on the instructions dated 7.7.1992 issued by the Investigation Bureau of the Department and Category Ga is about failure to complete the assessment for the accounting year, 1986-87 with promptness.

4. Defence of the petitioner as regards charge in Category Ka was that he was posted in the Special Circle, Ranchi on 18.12.1991 and prior thereto instructions dated 8.8.1990 were issued, which stood complied by his predecessor, as such, he had no occasion to make subsequent compliance of the instructions contained in the said letter as the same was never brought to his notice after he joined the Circle on 18.12.1991, which fact has been appreciated by the Enquiry Commissioner, who has recorded a finding in paragraph 76 that there is no evidence to suggest that the petitioner deliberately violated the instructions contained in circular letter dated 8.8.1990. As regards failure to issue forms, it has been suggested that the job of distributing the forms was entrusted to the different Assistant Commissioners posted in the Circle. Distribution of Form-F was with Mr. Haider, Form-C was with Mr. Prabhakar and road permits were being distributed by Mr. Kashyap and such arrangement of distribution was made even prior to the joining of the petitioner, which arrangement the petitioner even allowed to continue after his joining the Circle. About the charge Category Kha relating to violation of the instructions issued by the Investigation Bureau of the Department under their letter dated 7.7.1992, defence of the petitioner was that

whatever instructions as regards different firms within his jurisdiction were issued was complied with and reply was sent to the department complying the instructions, which fact has also been appreciated by the Enquiry Commissioner in paragraph 81 of his report. Charge in Category Ga is about failure to complete the assessment for the accounting year 1986-87. In this connection, delinquent petitioner submitted that those assessments were pending prior to his joining the Circle and when he joined he got those assessment completed, as such, for completing the assessment, he could not have been punished. This aspect has also been appreciated by the Enquiry Commissioner in paragraph 82 of his report. While differing with the enquiry report under second show cause notice dated 4.11.2004, the State Government, it appears, had only reiterated Charge Nos. 4(iv), 2(i), 3(i) as also has ignored the provisions contained in sub-section (6) of Section 9 of the Bihar Finance Act, which empowers the Deputy Commissioner to distribute the assessment work to the officers posted under him in the Circle and exercising such power, the assessment work was distributed to the different Assistant Commissioners and no exception about the exercise of statutory power by the petitioner could have been taken by the authorities.

5. Highlighting the aforesaid aspect of the matter, petitioner filed his second show cause reply, which is dated 16.11.2004, Annexure-10, but it appears, without considering the same, impugned punishment notification, Annexure-11 has been issued without giving reasons in support thereof. In the circumstances, there is no difficulty in concluding that the impugned notification infracts Articles 14 and 16 of the Constitution of India. In the circumstances, this Court has no option but to quash the notification, bearing No. 136 dated 22.3.2005, Annexure-11, which is, accordingly, quashed.

6. As petitioner superannuated on 31.3.2003 and by now two enquiry has already been held by two different departmental Enquiry Commissioners, who have exonerated the petitioner of all the charges under report dated 12.6.1999 and 1.7.2004, Annexures-2 and 7, in the circumstances, at this stage when he is in the evening of his life, he ought not to be proceeded any further and the matter be given a decent quitus. Arrears in terms of this order be paid to the petitioner as early as possible, in any case within three months from the date of receipt/production of a copy of this order. This application is, accordingly, allowed.