
(2014) 07 PAT CK 0073
In the Patna High Court
Case No : CWJC No. 5269 of 1997

Bachchan Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2015) 1 PLJR 170

Hon'ble Judges : Jayanandan Singh, J

Bench : Single Bench

Advocate : Shyama Prasad Mukherji and Shanti Pratap, Advocates for the Appellant; Y.P. Sinha and R.S. Singh, Advocates for the Respondent

Judgement

Jayanandan Singh, J.—Though technically separate proceedings were held against the four petitioners and separate orders were passed, but they have joined together in this writ application challenging the Orders jointly as, except for the names, all the orders are apparently identical. In fact the orders and notices show that on a common format only the names of the petitioners were changed. Initially the petitioners filed this writ application challenging their suspension orders dated 9.1.1996 annexed as Annexures-1, 1/A, 1/B and 1/C respectively, and to direct the respondents to pay them all arrears as well as current salary and allowances. However, soon after the filing of the writ application proceedings against them were concluded and orders of their dismissal were passed. Hence, they filed I.A. No. 166/98, bringing the said orders on record and praying for amendment in the prayer portion of the writ application by adding the prayer for quashing of the orders of their dismissal also, brought on record as Annexures-18, 18/1, 18/2 and 18/3, respectively. On the grounds mentioned in the I.A., by order dated 14.1.1998 passed by a Bench of this Court, the I.A. was allowed.

2. Short facts of the case are that at the relevant time the four petitioners were working as Accounts Clerk, Treasure Guard and Chainman under the Chief

Engineer, Water Resource Department, Motihari. They were respectively, President, Vice-President, Organizational Secretary and Vice-President of District Unit of Bihar State Non-Gazetted Employees Federation (Gope Gut) of the Motihari District. It is stated that the application of many of the employees of the Department at Motihari for temporary advance from their GPF account was pending with the Superintending Engineer, Design & Quality Control Circle, Motihari since long. Applications were submitted by the employees due to their dire necessity of money for marriage of their dependents, illness etc. etc. Since the same were not being processed and advance was not being ordered to be released, petitioners, along with some other employees, went in a delegation to meet the Superintending Engineer for redressal of their grievances and for expeditious disposal of the applications. There some incident happened which the District President of the Federation reported to the Chief Engineer through his letter of the same day, vide Annexure-2, with a request to make proper enquiry and take appropriate steps to prevent such incidents in future. However, it appears that the Superintending Engineer also reported the matter to the higher authorities, in the light of which, orders of suspension of petitioners were issued on 9.1.1996, vide Annexure-1 and the headquarters of -the petitioners were fixed at Hazaribagh and Chaibasa respectively. Later on, vide Annexure-3 series, resolutions were issued placing the petitioners under departmental proceedings and charge memos were issued to them. One Yadunath Singh, Superintending Engineer, Waterways Division, Ranchi, was appointed as Conducting Officer before whom petitioners were directed to submit their written statement. One Dharendra Kumar Singh, Technical Advisor of the same Division was appointed as Coordinating Officer. With the resolution a copy of the letter No. 50 dated 6.1.1996 of the Chief Engineer in five pages was cited as evidence and said to have been enclosed. The Conducting Officer was requested to conclude the proceeding within two months.

3. After receipt of the said resolution with charge memo petitioners filed their reply, vide Annexure-4 series, in which it was alleged that the Superintending Engineer himself had taken help of anti-social elements and has threatened them for which a proceeding 107 Cr.P.C. was pending and they have to appear in the court every 10-15 days. They requested that there should be an independent enquiry by any administrative officer of the Government not connected with the department and, in view of the fact that they had to appear in the court frequently, their headquarter should be shifted to Motihari. In their reply they narrated the entire incident in their own manner and asked for certain papers and alleged that the intention in fixing their headquarters at Hazaribagh and Chaibasa and the place of enquiry at Ranchi was to get the case pending in the court closed. It was specifically stated that a copy of the said letter of the Chief Engineer dated 6.1.1996 had not been made available to them with the resolution. It was also stated that the narration of the manner of incident by the Superintending Engineer and the Junior Engineer was not correct and they were suppressing the true fact just to save themselves.

4. However, the Conducting Officer, through his letter dated 13.8.1996, vide Annexure-5, informed the petitioners that in their representation they had tried to deviate from the issue and the documents, sought for in the representation, they may get from the department. It was stated that their representation was not in reply to the charges and therefore one more opportunity was being granted to them to appear on 26.8.1996 at 11.00 am in his office and submit their written statement. Petitioners did not appear in the proceedings physically, but filed their charge-wise reply, vide Annexure-6 series, which was received by the Conducting Officer after 26.8.1996 by post. By this time more than one and half month had expired. Hence, the Conducting Officer, through his letter dated 31.8.1996, vide Annexure-B/4, informed the department that till 26.8.1996 he had not received written statement of the petitioners and the Presenting Officer had also not appeared in the proceeding in spite of request which had hampered the examination of charges and the hearing of the proceeding. Hence, he requested the Government for further guidelines in respect of completion of the proceeding. The Conducting Officer thereafter again sent letters to the petitioners, vide Annexure-7 dated 7.9.1996, informing that their written statements have reached through post on 3.9.1996 which was not in the manner directed and, since they had not appeared in the proceeding, enquiry in respect of the different aspects of the charges could not be completed. They were also informed that in support of their written statement they were required to lead evidence. Hence, last opportunity was being given to them to appear on 16.9.1996 and produce their evidence.

5. When this letter was received by the petitioners they replied through Annexure-8 series that when they had met the Conducting Officer on 1.8.1996 in the Chamber and had requested him, they were assured that he will hold the enquiry at the place of occurrence i.e. Motihari, which the petitioners had requested in writing also through letter dated 3.8.1996. Through this letter they again requested that the enquiry should be held at the Motihari where petitioners were ready to produce their evidence and cross-examine the witnesses. In this letter it was again stated that the letter of the Chief Engineer dated 6.1.1996, which was cited as evidence in the resolution, had not yet been supplied to them. A delegation also met the Chief Engineer, Motihari and made a request for holding enquiry at the Motihari which was forwarded by the Chief Engineer to the Secretary of the Department through letter dated 8.10.1996 for necessary instructions. The petitioners and large number of other employees also submitted fresh representations to the Conducting Officer, vide Annexures-9/1 and 11, requesting him to visit Motihari and hold enquiry at the spot. However, this was not done and the Conducting Officer submitted his identical report dated 17.2.1997 in respect of the four petitioners, vide Annexures-C/4, D/4, E/4 and F/4 respectively, finding the petitioners guilty of the charges. Accordingly, 2nd show cause notice was issued to the petitioners on 3.6.1997, vide Annexure-16 series, along with a copy of the enquiry report. Petitioners filed their detailed reply, vide Annexure-17 series. Finally the orders of dismissal were passed by

the Disciplinary Authority on 12.12.1997, vide Annexure-18 series, dismissing the petitioners from service.

6. It appears that, on the first date of hearing of this writ application, petitioners also raised a grievance that, though they were continuing in suspension, their subsistence allowance was not being paid. Hence, by order dated 16.9.1997, this Court directed that, as long as the petitioners were under suspension, their subsistence allowance for each month be paid and if the same was not paid with arrears within one month their suspension was to stand revoked. After this order petitioners submitted a representation on 20.9.1997, vide Annexure-19 series, for payment of subsistence allowance, which was not paid and hence they submitted their joining on 20.10.1997, vide Annexure-20 series, before the Sub-Divisional Officer, Sikarahn Division at Motihari which was placed before the Executive Engineer who through his letters, as contained in Annexure-21 series, requested the Superintending Engineer for necessary directions. Later on the Chief Engineer also through his letter dated 4.12.1997, vide Annexure-22, requested the department for guidelines in respect of joining of the petitioners and for payment etc. However, no orders were passed in respect of their joining, and payment of subsistence allowance was passed only with the dismissal order. Through I.A. No. 1504 of 2014 death certificate of petitioner No. 2 has been brought on record as Annexure-23, showing him to have died on 20.6.2003.

7. In the background of these facts, learned senior counsel for the petitioners submitted that the respondents had suspended the petitioners and had proceeded with the enquiry with premeditated mind to punish them. He submitted that in fact by fixing their headquarters at Hazaribagh and Chaibasa the respondents ensured that the petitioners do not appear in the enquiry and do not get adequate opportunity to produce their evidence in support of their innocence. He submitted that the petitioners were Class-III and Class-IV employees and it was not practically possible for them to visit Ranchi on each and every date of the enquiry. It was also not possible for them to produce their evidence and take their witnesses to Ranchi for their deposition. He submitted that the respondents, by withholding the subsistence allowance of the petitioners also doubly ensured that the petitioners are prevented from getting a proper and fair opportunity to produce their witnesses. He submitted that it is a common knowledge that Ranchi is so far away from Motihari and it was not possible for the petitioners to travel to Ranchi frequently and hence they were deprived by the Conducting Officer of fair opportunity to participate in the enquiry which led to violation of principles of natural justice. In support of this contention he placed reliance on a judgment of a Division Bench of this Court in the case of Sheo Dayal Singh and Others Vs. State of Bihar and Others . He also submitted that it is a well settled law that non-payment of subsistence allowance, independently also, amounts to violation of principles of natural justice and fair play and vitiates the entire departmental proceeding. In support of this submission he placed reliance on a judgment of the Apex Court in the case of State of Bihar and Others Vs. Arbind, . He submitted that the letter of the Chief Engineer, cited as

evidence in the resolution of the Government initiating the departmental proceeding against the petitioners, was never supplied to the petitioners and the enquiry officer took into account extraneous materials and based his findings of guilt without taking into account the stand of the petitioners and documents referred by them in their representations and reply to show cause.

8. Learned counsel for the respondents, referring to the counter affidavits and the annexures therewith, submitted that since, petitioners were office bearers of the Federation at the local level, their headquarters were fixed at Hazaribagh and Chaibasa and the enquiry was held at Ranchi. However, he admitted that order for payment of subsistence allowance of the petitioners was passed only with the order of dismissal.

9. It may be that the petitioners were office bearers of the Federation. Hence the respondents may not have found it congenial to hold enquiry against them at Motihari itself. This is also true that the charges held against the petitioners, if correct were so serious that it may have called for the extreme punishment of dismissal only and nothing less. As per the charges framed against them and the materials available on record, it appears that the allegations against them was that on the relevant day they had entered the office chamber of Superintending Engineer Jai Prakash Narayan Singh and tried to assault him and abused him badly and kept him confined into the chamber for quite long. When the Junior Engineer Satya Narayan Singh tried to intervene he was also assaulted due to which he sustained injuries. These acts by the petitioners were serious enough to justify their dismissal. But this did not mean that they could be dismissed without giving them a proper and fair opportunity to take their defence, unless the respondents had decided to dispense with the enquiry in their cases in terms of sub-clause (b) of 2nd proviso to clause (2) of Article 311 of the Constitution. This they did not do and they decided to hold enquiry against them under the provisions of the relevant Rules. But it is clear that the respondents, acting with premeditated mind, had suspended the petitioners immediately and had fixed their headquarters as far as at Hazaribagh and Chaibasa. It is clear that this was done to teach them lesson from day one for their conduct. Had it not been so, and the intentions of the respondents would have been bonafide, they had more than a dozen places nearer where petitioners' headquarters could be fixed and enquiry could be held where it could be possible for the petitioners to participate easily. With the charge memo the letter of the Chief Engineer was cited as documentary evidence. Petitioners in their written letters denied to have received this letter of the Chief Engineer. Respondents have not produced any documentary evidence on record to show that in fact this letter had been sent to the petitioners. Respondents also did not pay subsistence allowance of the petitioners, even after orders of this Court, so that they could make efforts to meet the expenses of traveling from Motihari to Ranchi frequently to participate in the proceeding on each date. The enquiry report shows that no witness was examined in the enquiry nor did the complainant Superintending Engineer and the Junior Engineer appear.

10. The enquiry officer completed the enquiry only on the basis of the said letter of the Chief Engineer dated 6.1.1996, which appears to have never been made available to the petitioners. In the enquiry the Conducting Officer also took notice of the proceedings of the meeting of the Bihar Engineers Association and Junior Engineers Association dated 4.1.1996 and noticed the resolutions passed therein, giving open threat to the Government if no action was taken in the matter. In the proceeding, written statement of the typist of the Superintending Engineer had been filed denying the incident in the manner alleged, which he had withdrawn later on. But the Conducting Officer did not take care to examine him also as witness from department's side at least. In the enquiry he does notice that with their reply the petitioners had filed many documents, but he found only one document relevant, without assigning reasons for not considering rest of the documents.

11. From the report it appears that the Conducting Officer held the enquiry only on three dates, i.e., on 5.8.1996, 26.8.1996 and 16.9.1996. From the letter of the Conducting Officer dated 31.8.1996, vide Annexure-B/4, it appears that on 5.8.1996 and 26.8.1996, Presenting Officer had not appeared in the proceeding and had not produced the necessary documents. Hence, the Conducting Officer reported the Department that enquiry of the charges could not be held and hearing in the proceeding had remained stalled. If that was so, then what hearing the Conducting Officer held on 16.9.1996, on the last date, and on what independent materials he came to the conclusion that the charges against the petitioners were proved? From the report it appears that he has tried to find out charges proved from the reply of the petitioners themselves. But in their reply petitioners had said a lot of their things also and had specifically denied the allegations of assault and abuse and keeping the Superintending Engineer confinement in his Chamber. In view of this denial the same had to be proved by adequate evidence. But the Conducting Officer apparently did not direct the Department to produce evidence in support of these allegations.

12. A departmental proceeding is a quasi judicial proceeding and the conducting officer acts as an Arbitrator. The department is represented by the presenting officer who is required to produce cogent and reliable evidence in support of the charges framed. Apparently on 5.8.1996 and 26.8.1996 the Presenting Officer had not even appeared and had not produced evidence in support of the charges. There is nothing on record to show that on the last date in the proceeding, i.e. on 16.8.1996, he did appear and produce evidence good enough to prove the charges against the petitioners. It is apparent that the petitioners as well as delegation of the Federation had been asking the Conducting Officer that the enquiry should be held at Motihari so that the petitioners may be in a position to produce their evidence and cross-examine them. But this was not accepted and the petitioners were directed to produce their evidence at Ranchi. The petitioners being the Class-III and IV employees, and not getting even their subsistence allowance, were obviously not in a position to participate in the enquiry at a far place like Ranchi and produce their evidence. The very reference of the

resolution of the Bihar Engineers Association and Junior Engineers, Association dated 4.1.1996 in the enquiry report proves that the respondents were proceeding with the premeditated mind to punish the petitioners. The Conducting Officer himself was a Superintending Engineer and obviously a member of the Association which had resolved that the action must be taken against the guilty employees within one week, failing which the Engineers Association would take agitational approach. This shows that there was a clear threat by the Engineers Association, Motihari Branch which must be in the back of mind of the Conducting Officer all the time while conducting the enquiry against the petitioners. All these factors show that the enquiry held against the petitioner was not fair and impartial and odds weighed heavily against them, and the respondents, from the very beginning were proceeding with a view to dismiss them from service.

13. However, from the replies of the petitioners it appears that there had been some incident on the fateful day, though they have denied of having assaulted and abused the Superintending Engineer and the Junior Engineer. But at least this much they have accepted that they had entered the Chamber of the Superintending Engineer for redressal of the grievances of their co-employees and the atmosphere became charged, which was defused later on with the intervention of some of them. Therefore, this Court finds that, though the orders of their dismissal is fit to be set aside on the ground of violation of principles of natural justice and denial of fair opportunity to them to defend themselves, but they are not entitled for any reinstatement. Hence, taking into account the entire facts and circumstances of the case, though the orders of their dismissal, as contained in Annexures-1, 1/A, 1/B and 1/C respectively, are quashed, but it is directed that in lieu of reinstatement in service from retrospective effect, notionally if they have crossed the age of superannuation, and actually if they have not, each of them shall be entitled to Rs. 25,000/- only as compensation. However, in any case, if they have crossed the age of superannuation, or they now superannuate, they shall be entitled to pension calculated on the basis of their notional pay, fixed with all increments and revisions, as on the date of their schedule date of superannuation, treating them as notionally in service from the date of their dismissal. All the directions, as above, must be complied with in full within 3 months from the date of receipt/production of a copy of this order. This writ application is accordingly allowed with the aforesaid observations and directions.