(2011) 12 PAT CK 0019

In the Patna High Court

Case No : CWJC No. 6962 of 2007

Baidyanath Prasad Verma APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:
Constitution of India, 1950 — Article 320

Citation : (2012) 3 PLJR 289

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

Bench : Single Bench

Advocate : Rupak Kumar, for the Appellant; P.K. Verma, Saroj Sharma for the State and Mr. Sanjay Pandey for the BPSC, for the Respondent

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner, the State and the Bihar Public Service Commission (hereinafter referred to as the BPSC). At the relevant time, petitioner served as Executive Engineer in Patna West Road Division, Patna. He has fifed this writ petition questioning the notification of the State Government, bearing No. 13512(S) dated 1.12.2006, Annexure-1, whereunder after conclusion of the departmental proceeding, his pension has been reduced by 50% with further direction that he shall not be paid salary beyond the subsistence allowance for the period of suspension between 27.11.1998-31.1.1999. Earlier, petitioner was placed under suspension under order dated 27.11.1998 and was served with the charge-sheet dated 30.1.1999, Annexure-4, perusal whereof indicates that for the Financial Year 1998-99, he was given allotment of Rs. 67,57,055/-for execution of the works during current financial year i.e. 1998-99, but without instruction from the State Government, he utilized Rs. 42,52,934/- out of the allotted amount for discharging the liabilities of the earlier years i.e. 1994-95, 1995-96 and 1996-97. Besides the charge-sheet dated 30.1.1999, petitioner was also served with supplementary charge-sheet dated 22, 25.6.1999, Annexures-6 and 7 alleging splitting up of the works. In response to the aforesaid three charge-sheets, petitioner filed written defence dated 13.4.1999 and 27.7.1999, Annexures-8 and 11 accepting the position that he discharged the liabilities of the earlier years from the funds allotted for execution of the works in the current financial year i.e. 1998-99 without any instruction of the State Government. He also accepted the fact that the works were split up but no financial loss was caused to the State Government. In regard to the payments made for discharging the liabilities of the earlier years, petitioner stated in the show cause that such payments were made in the light of the Codal provisions i.e. Rule 13 of the Bihar Financial Rules and Rule 107 of the Budget Manual but by making such payment no financial loss was caused to the Government.

2. I have perused the relevant rules incorporated in the Bihar Financial Rules as also in the Budget Manual. Rule 13 of the Bihar Financial Rules and Rule 107 of the Budget Manual do not authorize the Executive Engineer to divert funds received for the purpose of execution of the works in the current year for clearing the liabilities of the earlier years. Perusal of the rules indicate that enforcement of financial discipline is the responsibility of the Disbursing Officer and not of the Executive Engineer. In such view of the matter, I am of the opinion that when petitioner proceeded to divert the fund received for payment of the works executed in the same financial year for discharging the liabilities of the earlier years, he committed grave misconduct, which may not have caused financial loss to the State Government as from the enquiry report it does not appear that the payments made by the petitioner for the works executed in the earlier years, were never executed. It also does not appear from the cause shown by the petitioner that he was ever authorized to split up the works, as such, by splitting the works into small amount, in my opinion, petitioner violated the instructions of the State Government and thereby committed grave misconduct.

3. Learned counsel for the petitioner challenged the impugned order dated 1.12.2006, Annexure-1 on the ground that Enquiry Officer during the enquiry proceeding relied upon the departmental files presented by the Presenting Officer, but copy of those files were not given to the petitioner. In support of such contention, reliance is placed on the letter dated 28.3.2000 of the Enquiry Officer by which he submitted enquiry report to the State Government. Learned counsel for the petitioner further assailed the impugned order on the ground that the author of the Liability Committee Report was not examined. He also submitted that the charge proven against the petitioner does not indicate that any financial loss was caused by the petitioner to the State Government, thereby it cannot be said that petitioner caused grave misconduct, petitioner having not been held guilty of grave misconduct, his pension cannot be reduced by resorting to Rule 43(b) of the Bihar Pension Rules. In this connection, reliance is placed on the judgment of the Hon''ble Supreme Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, .

4. Counsel for the State opposed the submission and submitted that deviation of fund for discharging the liability of the earlier years without the approval of the Disbursing Authority is admitted by the petitioner and it is submitted on his

behalf that contractors who executed the works in the earlier years were pressing hard for payment but such contention of the petitioner has to be rejected as without the approval of the Disbursing Authority of the State Government, the liabilities of the earlier years could not have been discharged from the funds sanctioned for execution of the works in the current year. Diversion of fund and splitting of works without the approval of the authority is grave misconduct on the part of the officer. He further submitted that examination of the author of the Liability Committee Report was not at all relevant for proving the charge against the petitioner in view of his admission that he had deviated the funds for clearing the liabilities of the earlier years without any instruction to that effect from the State Government. As regards failure to serve the copy of the departmental files produced by the Presenting Officer, it is submitted by the learned counsel for the State that during the enquiry proceeding, petitioner was always at liberty to request the Enquiry Officer to allow him the benefit of perusal of the departmental files produced by the Presenting Officer but no such request was ever made by the petitioner before the Enquiry Officer.

5. Having considered the submission of the counsel for the petitioner and the State and having perused the Codal provisions i.e. Rule 13 of the Bihar Financial Rules, Rule 107 of the Budget Manual and Rule 303 of the Public Works Account Code, I am of the view that it is none of the business of the Executive Engineer to deviate the funds as per his own discretion. The funds are allotted with specific instruction and in my opinion, the Executive Engineer is to utilize the allotted fund for the purpose for which the funds were received. There may be liabilities of the earlier years, which is the concern of the State Government or the Disbursing Officer, petitioner, in my opinion, by diverting the fund for discharging the liabilities of the earlier years without the approval of the competent authority, committed grave misconduct.

6. In view of my findings above, petitioner ought not to have utilized the allotted fund for discharging the liabilities of the earlier years. From the pleadings made by the parties, nothing has been brought to my notice that Executive Engineer is authorized to split up the works. Splitting of the works may not have caused financial loss to the State Government, but without instructions of the State Government, petitioner could not have split the works.

7. Before imposing the punishment of reduction of pension of the petitioner by 50%, opinion was sought from the BPSC in the light of sub-clause (3C) of Article 320 of the Constitution of India, the BPSC under recommendation dated 13.7.2006 did not approve the proposal of the Government to reduce pension of the petitioner by 50% on the ground that there is no evidence to suggest that funds were diverted by the petitioner to discharge non-executed liability of the yester years, thereby there is hardly any evidence to suggest that the State Government suffered any monetary loss. Aforesaid recommendation of the BPSC may not be binding on the State Government but considering the fact that BPSC

is an independent Constitutional Body its opinion may not be binding but is entitled to respect. Considering the fact that State Government has not suffered any monetary loss, I am of the view that State Government should reconsider the punishment imposed on the petitioner and reduce his punishment by 10% and for such purpose while maintaining the finding of guilt against the petitioner, I set aside the impugned punishment notification dated 1.12.2006, Annexure-1 and remit the matter for reconsidering the quantum of punishment of the petitioner for reducing his pension by 10%. Application is, accordingly, disposed of.