
(1993) 09 PAT CK 0056

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2468 of 1993 (R)

Bhola Nath and Others

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Citation : (1993) 09 PAT CK 0056

Final Decision : Dismissed

Judgement

S.B. Sinha and Narayan Roy, JJ.—In this writ application, the Petitioners have prayed for quashing of a departmental proceeding initiated against them by Respondents whereby and whereunder the chargesheet were drawn up against them inter alia on the ground that they were appointed pursuant to a policy decision of the Respondents that the wards of the disabled persons would be appointed in the year 1983 and thus the disciplinary proceeding started against them purported to be on the ground that they have committed fraud must be held to be illegal.

2. Mr. Anil Kumar Sinha, learned Counsel appearing on behalf of the Petitioners inter alia submitted that the departmental proceeding initiated after a period of 10 years must be held to be bad in law and therefore liable to be quashed. It was further submitted that as the Petitioners 2 and 3 were appointed by the General Manager, the agent is not the appointing authority in relation to the Petitioners.

Learned Counsel appearing for the Petitioners in support of his contention has placed reliance upon a decision of the Supreme Court in the The State of Madhya Pradesh Vs. Bani Singh and another, and a decision of this Court in Bhageshwar Jha Vs. State of Bihar and Others, . In Bani Singh's case (supra) a departmental proceeding was initiated after 12 years but the documents could not show that they were not aware of the irregularity committed by the delinquent which took place in the years 1975 to 1977. In this situation, the Supreme Court held as follows:

The appeal against the order dated 16.12 1987 has been filed on the ground that the Tribunal should not have quashed the proceeding merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to (sic) even in April, 1977 there was doubt about the involvement of the officer in this said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there (sic) no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.

It is evident that the aforementioned decision, therefore, is not an authority for the proposition that only because there had been delay in initiating a departmental proceeding, the same should be quashed.

3. The question as to whether the fraud committed by the Petitioners for obtaining employment is essentially a question of fact. It is thus only after an enquiry is held, the aforementioned facts may be established. In Bhageshwar Jha's case (supra) this Court was considering awarding of punishment of censure upon the writ Petitioner. In that case, it was held that no proceeding in terms of the Bihar Police Manual and/or Civil Services (Classification, Control and Appeal) Act was initiated. In the facts and circumstances of that case an observation was made that there was nothing on the record to show as to why the Petitioner was asked to submit his explanation after a period of two years. In that situation, it was observed as follows:

It does not stand to reason as to why In relation to an incident which took place in the year 1983, the Petitioner was asked to submit his explanation on 12.3.1985, recommendations by the Director General of Police was made on 9.12.1986 and the impugned order was passed on 28th November, 1991. The impugned order dated 21.12.1991 as contained in Annexure 2 to the writ application also does not state any reason of the aforementioned penalty as against the Petitioner.

Evidently, the aforementioned decision has no application to the facts and circumstances of this case.

4. It is now well known that this Court exercise of jurisdiction under Article 226 of the Constitution of India, does not quash notice of show cause. In State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, it was held as follows:

The High Court was not justified in quashing the show cause notice, when a show

cause notice issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not to have interfered with the show cause notice.

5. Further it is well known that obtaining employment fraudulently must be viewed seriously. Reference in this connection may be made to Rita Mishra and others and 12 Other cases Vs. Director, Primary Education, Bihar, and Others, wherein the Full Bench of this Court held:

Forgery is a serious public crime in the Indian law from the very beginning, and, in particular, since the enforcement of the Indian Penal Code, 1860, for now more than a century and a quarter. Chapter XVIII of the said code deals with crimes of this nature. Both forgery u/s 463 and the making of a false document u/s 464 are couched in the widest terms. Equally well it is to recall the earlier definition of "valuable security" in Section 30 of the said Code. This wide ranging definition denoting it (which is important for our purpose) as a document, whereby a legal right created, extended, transferred, extinguished or relinquished is again framed so broadly that a letter of appointment creating a legal right to the post would come within its ambit. How gravely the law disfavours the serious aspects of the crime is manifest from the fact that more grievous forms of forgery under Sections 467, 474 and 475 are made punishable with imprisonment for life. Once that is so, could it possibly be said that a person who is guilty of a crime of this nature and is liable to punishment therefore, can, nevertheless, come in the writ jurisdiction and claim the right to salary on the basis of the document which steeps him in serious guilt? The answer must obviously be rendered in the negative.

6. Further, it is evident from Annexures 3 to 3/c that the show cause notices have been issued by the agent as also by the General Manager, Ropeways Area. The notices were issued in September-October, 1992. The Petitioners thereafter asked for supply of certain documents, by letter dated 19th October, 1992. It now appears that an Enquiry Officer has been appointed who had directed the Petitioners to appear before him by his letter dated 2/3 August, 1993. In this view of the matter, evidently, the Petitioners have approached this Court only when they have been directed to appear before the Enquiry Officer. Further, this Court in several cases has held that the agent is the disciplinary authority under the certified standing order of Bharat Coking Coal Ltd. Further, in any event, the Supreme Court recently in State of Madhya Pradesh Vs. Srikant Chaphekar, , held

that the departmental proceeding need not be initiated by the disciplinary authority alone.

7. For the reasons aforementioned, there is no merit in this application. It is accordingly dismissed.