
(2008) 11 PAT CK 0040
In the Patna High Court
Case No : LPA No. 180 of 2006

Bihar State Road Transport Corporation	APPELLANT
Vs	
Vidya Nand Sharma and Others	RESPONDENT

Date of Decision : 18-11-2008

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2009) 2 PLJR 559

Hon'ble Judges : R.M. Lodha, C.J.; Kishore K. Mandal, J

Bench : Division Bench

Advocate : P.K. Verma and Nand Kumar Singh, for the Appellant; Umakant Shukla and Rajesh Ranjan No. 1 for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

1. Bihar State Road Transport Corporation (for short, "the Corporation") has preferred this appeal against the judgment and order dated 14th November, 2005 passed by the Single Judge, whereby he allowed the writ petition filed by the present respondent No. 1 (hereinafter to be referred, "the petitioner") and quashed and set aside the order dated 25th May, 2004, by which he was compulsorily retired in terms of Rule 74(b)(ii) of the Bihar Service Code. That provision contained in Rule 74(b)(ii) of the Bihar Service Code is applicable to the employees of the Corporation, is not in dispute. The said provision reads thus:-

"74(b)(ii).-The appointing authority concerned may after giving a Government servant at least three month's previous notice in writing, or an amount equal to three month's pay and allowance in lieu of such notice, require him in public interest, to retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice."

2. It would be, thus, seen that an employee in the Corporation having completed thirty years of qualifying service or having attained fifty years of age or on any

date thereafter may be compulsorily retired in public interest by giving at least three month's previous notice in writing or an amount equal to three month's pay and allowance in lieu of such notice.

3. By the order dated 25th May, 2004, the petitioner was compulsorily retired on the ground that he disobeyed the order of the departmental officer and engaged himself in the activities against the interest of the Corporation and, thus, lost his utility for retention of service in the Corporation. The legality and the correctness of this order was put in issue by the petitioner by filing the writ petition.

4. The Corporation filed counter affidavit in opposition to the writ petition and set up the plea that having disobeyed the order of the higher authorities and indulged in anti-Corporation activities and having not improved his efficiency, the retention of the petitioner in service was not found useful for the Corporation and he has been compulsorily retired under Rule 74(b)(ii) of the Bihar Service Code.

5. The Single Judge was not persuaded by the stand of the Corporation and keeping in view the tenor of the impugned order held that the order was stigmatic and, therefore, unsustainable in law. It is this order, as indicated above, that is impugned in the present appeal.

6. Mr. P.K. Verma, counsel for the Corporation would submit that several opportunities were given to the petitioner to improve his efficiency but in spite of that no improvement in the efficiency of the petitioner was found; he was also found to have disobeyed the order of the higher authorities and indulged in anti-Corporation activities and, thus, he was compulsorily retired in public interest.

7. The counsel for the Corporation would further submit that if an employee disobeys the order of his superiors and indulges in the activities against the interest of the employer, and in that backdrop, if the employee is compulsorily retired, such order of compulsory retirement has to be treated in public interest, even if the expression "public interest" has not been used in the order. He placed reliance upon the two decisions of the Supreme Court, namely, (one) Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, and (two) U.P. State Mineral Development Corpn. and Another Vs. K.C.P. Sinha, .

8. On the other hand, the counsel for the respondent No. 1 supported the order of the Single Judge.

9. In a long line of cases, it has been held by the Supreme Court that if the order of compulsory retirement casts a stigma on an employee, or in other words it contains statement casting aspersion on the conduct of the employee, such conduct may attract provisions of disciplinary action but the order of compulsory retirement would be rendered bad in law. On the other hand, if the statement in the order of compulsory retirement does not really amount to charge or imputation but it only refers to the assessment of his work or efficiency, the order of compulsory retirement would stand as it is not an order of punishment. This is what has been observed by the Supreme Court in the case of Allahabad

Bank Officers" Association in paragraph-17 of the report. It is as follows:

"17. The above discussion of case-law makes it clear that if the order of compulsory retirement casts a stigma on the Government servant in the sense that it contains a statement casting aspersion on his conduct or character, then the Court will treat that order as an order of punishment, attracting provisions of Article 311(2) of the Constitution. The reason is that as a charge of imputation is made the condition for passing the order, the court would infer therefrom that the real intention of the Government was to punish the Government servant on the basis of that charge or imputation and not to exercise the power of compulsory retirement. But mere reference to the rule, even if it mentions grounds for compulsory retirement, cannot be regarded as sufficient for treating the order of compulsory-retirement as an order of punishment. In such a case, the order can be said to have been passed in terms of the rule and, therefore, a different intention cannot inferred. So also, if the statement in the order refers only to the assessment of his work and does not at the same time cast an aspersion on the conduct or character of the Government servant, then it will not be proper to hold that the order of compulsory retirement is in reality an order of punishment. Whether the statement in the order is stigmatic or not will have to be judged by adopting the test of how a reasonable person would read or understand it."

10. In the backdrop of the aforesaid legal position, we may proceed to consider whether the order dated 25th May, 2004 is stigmatic casting aspersion on the conduct of the petitioner or it only reflects the assessment of his work and efficiency.

11. The statement contains in the order dated 25th May, 2004 about the conduct of the petitioner is as follows:--

"SHRI VIDYANAND SHARMA, SAMWAHAK, MOTIHARI PARTISTHAN KO SANCHALAN MUKH PATNA KE GAYAP SANKHAYA-2336 DINAK 22.5.2004 KE ANUPALAN MEN VIBHAGIYA PADADHIKARI KE ADESH KI AWHELNA KARNE TATHA NIGAM VIRODHI KARYA KARNE KE LIYE INKI SEVA KI UPYOGITA NAHIN RAHI."

12. Thus, what has been recorded in the order of compulsory retirement is that the petitioner is not fit to be retained in service as he has disobeyed the order of the departmental officer and engaged himself in the activities against the interest of the Corporation. A plain reading of the aforesaid statement leaves no manner of doubt that it is a blemish and imputation against the petitioner having deviated from the norm by disobeying his superior and engaging himself in the activities against the interest of the Corporation. In other words, the statement in the order of compulsory retirement is a statement that indicts the petitioner of misconduct having disobeyed the command of the superior and indulged in anti-Corporation activities. It surely casts an stigma in service career of the petitioner as his conduct has been found to be not normal or of a standard expected of for

a Corporation employee.

13. Rule 74(b)(ii) of the Bihar Service Code having been made applicable to the Corporation employees, empowers the Corporation to retire its employee compulsorily in public interest on fulfillment of conditions mentioned therein. In the entire order of compulsory retirement, no statement is recorded that the petitioner is being compulsorily retired in public interest. We assume in favour of the Corporation that it was not necessary so to do but then there must be material which may establish public interest. Save and except a bald statement in the counter affidavit that several opportunities have been given to the petitioner to improve his efficiency and obey the order of the higher authorities, no material whatsoever has been produced in support thereof. Even the statement that several opportunities have been given to the petitioner to improve the efficiency and obey the order of the higher authorities, is founded on a letter written by the Divisional Manager to the Chief of Administration and there is nothing on record to show that any communication or office memo to that effect was issued to the petitioner. The copy of the letter dated 30th April, 2004 has also not been placed on record. In this view of the matter, the statement recorded in the impugned order dated 25th May, 2004 has to be given plain meaning and plainly read, it leads to only one conclusion and that conclusion is that the statement is stigmatic and it casts aspersion on the conduct of the petitioner.

14. We, thus, find that the Single Judge has considered the matter in right perspective justifying no interference in the appeal.

15. Before we close, we would like to refer a decision of the Supreme Court in the case of U.P. State Mineral Development Corporation, upon which reliance has been placed by the counsel for the Corporation. The counsel relied upon paragraph-16 of the report which reads thus:-

Shri Tripathi has submitted that the said remarks were made by Shri A.P. Singh on 19.5.1985 after he had ceased to be the Managing Director of the Corporation and that he had taken the file with him when he left the Corporation and he returned the file only in 1987. It has also been urged by Shri Tripathi that the respondent had submitted a representation against the remarks and the same has not been considered. The fact of the respondent having submitted a representation against the said remarks was denied by the appellant before the High Court. The High Court felt that this being a disputed question of fact, could not be decided in writ jurisdiction. We are in agreement with the said view of the High Court. In so far as the remarks are concerned, we are of the view that the same cannot be ignored only because the relevant file was taken away by Shri A.P. Singh, the Reviewing Officer, with him and the file was sent back after two years in 1987. No case of mala fides has been made out by the respondent against the Reviewing Officer. The said remarks contain a reflection on the integrity of the respondent in the matter of discharging his duties. Having regard to the said remarks it is not possible to hold that the compulsory retirement of

the respondent by the appointing authority under order dated 20.8.1988 was not in public interest. We are, therefore, of the view that the order of compulsory retirement of the respondent does not suffer from any infirmity and the High Court was not justified in setting aside the said order."

16. It is pertinent to notice that in the case of U.P. State Mineral Development Corporation, the remarks under consideration before the Supreme Court were thus:-

"I regret that I cannot agree with the Reporting Officer. Shri K.C.P. Sinha evaded responsibility and his general reputation for integrity was bad. He got his own brother-in-law appointed as Sales Agent for Silica Sand and other products without disclosing this fact to the Management and continued to deal with him throughout without disclosing this relationship. His general reputation somehow has not been very good. I was not satisfied even with his administrative ability. I would assess his performance and leadership qualities inadequate. He might be able to work successfully under close supervision but is unsuitable for an independent assignment. His written work is well below average.

I would rate his performance as poor."

17. In so far as the present case is concerned, neither confidential report nor any other record, based on which statement has been made in the order of compulsory retirement dated 25th May, 2004 that the employee had disobeyed the departmental officer and engaged himself in the activities against the interest of the Corporation, has been annexed with the counter affidavit nor such record was placed before the Single Judge or before us for perusal. In what we have observed above, the letters patent appeal has no merit and deserves to be dismissed and it is dismissed with cost, which we quantify at Rs. 5,000/- (five thousand).