

(2006) 02 JH CK 0042
In the Jharkhand High Court
Case No : L.P.A. No. 69 of 2005

Braj Kishore Prasad Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Citation : (2006) 2 JCR 113

Hon'ble Judges : S.J. Mukhopadhaya, J; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : R. Krishna, for the Appellant; Nahala Sharmin and M.S. Akhtar, S.C.-II, for the Respondent

Final Decision : Allowed

Judgement

1. The appellant, who was in the services of the State, while posted as Junior Statistical Supervisor in District Statistic Office, Purnea, regarding five charges a departmental proceeding was initiated against him and on the basis of the report, submitted by the enquiry officer, he was removed from service vide order No. 475 dated 24th April, 1976. The appeal, preferred against the said order, having been rejected, the petitioner moved before the Patna High Court in C.W.J.C. No. 4290 of 1981, wherein the order of removal was set aside by a Division Bench of Patna High Court on 23rd March, 1984. Liberty was given to the enquiry officer to obtain specimen signatures of one Dharnidhar Jha and the petitioner and to get the opinion of handwriting expert before giving a final finding. The appellant was, thereafter, re-appointed and continued in service.

2. According to the counsel for the appellant, the respondents also decided to drop the proceeding vide Memo No. 2127, dated 9th September, 1987 (Annexure 2 to the memo of appeal). According to the appellant, he was reappointed vide order No. 11/81-22, dated 7th January, 1985 (Memo No. 56, dated 7th January, 1985). By the said order, while he was re-appointed, at paragraph No. 2 of the said order it was mentioned that the decision with regard to the suspension period shall be taken later on whereas at paragraph No. 3 it was ordered that the

departmental proceeding will continue and separate order relating to the proceeding shall be issued.

3. By subsequent order, contained in Memo No. 2127, dated 9th September, 1987", the disciplinary authority ordered to read "reinstatement" in place of "reappointment" and also ordered to delete paragraph Nos. 2 and 3 of the office order, contained in Memo No. 56, dated 7th January, 1985. Thereafter, the decision to continue the departmental proceeding, as was made vide paragraph No. 3 of the order, contained in Memo No. 56, dated 7th January, 1985, was deleted, which, according to the appellant, amount to taking decision to drop the proceeding.

4. It appears that in the year 1993, the petitioner was made to retire from service with effect from 31st October, 1993, which was challenged by him before Patna High Court in C.W.J.C. No. 6890 of 1994, wherein, allegation was made that his date of birth has been fabricated. The said writ petition was disposed on 13th April, 1995 with a direction to the respondents to make enquiry with regard to the date of birth and to pass final order,

5. After retirement, the petitioner having not been paid the retiral benefits and other dues, preferred another writ petition before Patna High Court being C.W.J.C. No. 2713 of 2000, wherein, prayer was made to pay him the retiral benefits and other dues. In the mean time, by office order No. 168, dated 7th April, 1995, the competent authority affirmed the order of removal, as was passed on 24th April, 1976 with a further order that the appellant shall not get any promotion or any financial benefit for the period of suspension. The said order was challenged by the appellant by filing an amendment petition being LA. No. 427 of 2004, the appellant having come to know about the said order for the first time from the enclosure of the counter affidavit.

6. When the case was taken up for hearing, at the instance of the counsel for the State that alternative remedy is available for, learned Single Judge allowed the appellant to prefer appeal and the appellate authority was directed to condone the delay and to decide the same on merits.

7. The facts, as narrated above, have not been disputed by the respondent State. It is not in dispute that the order of removal, as was passed on 24th April, 1976, was set aside vide judgment dated 23rd March, 1984, passed by Patna High Court in C.W.J.C. No. 4290 of 1981. Thereafter, the petitioner was reinstated to the services and the order to continue with the departmental proceeding, as was stipulated at paragraph 3 of the said order, was deleted by subsequent order dated 7th January, 1985, para 8. In the circumstances, the order of removal having been set aside, there was no occasion for the Director to affirm such order, which was not existing, in law, and, as such, there was no occasion to refer the matter for decision by the appellate authority.

9. For the reasons aforesaid, we set aside the order passed by the learned Single Judge, for the same reason, office order No. 168 dated 7th April, 1995 passed by

the Director, Department of Statistics and Evaluation, Govt. of Bihar, Patna is also set aside.

10. The letters Patent Appeal is, accordingly, allowed with a direction to the respondents to pay the petitioner the retrial benefits, to which he is entitled, in accordance with law, as also the other dues, within a period of three months from the date of receipt/production of a copy of this order.

11. So far as the period of suspension is concerned, the order of suspension having been set aside and finally the proceeding having reached finality in view of the order dated 7th September, 1987, the respondents are directed to pay the petitioner's arrears of salary for the period of suspension, after adjusting the subsistence allowance, already paid, within the aforesaid period of three months.