

(2018) 06 PAT CK 0074

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No 863 Of 2014

Chavikala

APPELLANT

Vs

State Of Bihar Through Chief Secretary And Ors

RESPONDENT

Date of Decision : 29-06-2018

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b), 139

Bihar Government Servants (Classification, Control And Appeal) Rules, 2005 — Rule 17(23)(ii), 18, 18(2), 24(2)

Citation : (2018) 4 PLJR 135

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Mukesh Kumar, Shally Kumari, Dhanendra Chaubey

Final Decision : Allowed

Judgement

1. Heard the learned counsel for the petitioner and the respondent-State.

2 Writ petition has been filed challenging the order dated 01.09.2010 bearing Memo No 8597 purporting to convert the pending departmental

proceedings against the original writ petitioner into a proceeding under Rule 43 (b) of the Bihar Pension Rules. Original writ petitioner has also prayed

for quashing of the punishment inflicted upon him directing deduction of his pensionary amount by 15% under order dated 08.02.2013 bearing Memo

No 2283 (Annexure 5) issued by the Officer on Special Duty in the General Administration Department. Original writ petitioner had also prayed for

any additional relief and sought leave of this Court to assail the order dated 18.06.2013, as contained in Annexure 6 to the writ petition, whereby

original writ petitioner's review application has been rejected by the Joint Secretary to the Government of Bihar in the General Administration

Department.

3 Learned counsel for the petitioner has drawn the attention of this Court towards the fact that during pendency of the writ petition, the original writ

petitioner has passed away and as of today, wife of the deceased has been substituted and she is pursuing the instant proceedings.

4 The submissions have been confined to the challenge made to Annexures 5 and 6, as noticed hereinabove. The limited issues raised by the learned

counsel for the petitioner does not require this Court to delve deep into the allegations and the findings of the Enquiry Officer. However, this Court will

take notice of the necessary details.

5 Under charge memo dated 29.04.2004, the original writ petitioner was communicated with some allegations which were broadly under two

categories, firstly in relation to the non-compliance of departmental procedure and in connection with the issuance of licence to Public Distribution

System Dealers (for brevity, PDS Dealers). The second allegation was that the petitioner had committed irregularity while administering oath in the

oath ceremony of the elected representatives pursuant to the Panchayat Elections, 2001. The charges were, therefore, broadly in two categories, one

dealing with the PDS Dealers and the other dealing with petitioner's discharge of duty in relation to the Panchayat Elections.

6 Enquiry report in relation to the charges pertaining to the first part of the allegations has not been submitted. It is the specific case of the petitioner

that the enquiry report in relation to the charges conducted for alleged irregularities in issuance of PDS Dealers's licence has not been served on

the petitioner. The same does not form part of the records here; nor do the impugned orders show any consideration of the same. It is only in respect

to the allegations regarding the administering of oath that enquiry report has been submitted after conclusion of the enquiry. The report of the Enquiry

Officer is dated 20.02.2010.

7 On all five allegations pertaining to irregularities alleged against the petitioner while administering oath of the elected representatives, the Enquiry

Officer has returned the finding that none of the charges could have been proved. The petitioner, thereafter, has been served with a second show

cause notice. The same is dated 14.06.2011 bearing Memo No 6619. The Disciplinary Authority has disagreed with the findings of the Enquiry

Officer. Bare perusal of the order communicating the points of disagreement shows that the same is contrary to the mandate of Rule 18 (2) of the

Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, Bihar CCA Rules) and the established law with reference to

the manner in which such a notice purporting to be a notice of disagreement with the findings of the Enquiry Officer, is to be issued. This lapse on the

part of the Disciplinary Authority to communicate notice of his disagreement in compliance to Rule 18 (2) of Bihar CCA Rules would constitute a

ground to interfere with the said order inasmuch as the same is patently illegal. The disagreement with the Enquiry Officer has been communicated as

follows:

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8 None of the reasons or points of disagreement with the findings of the Enquiry Officer have been communicated. No tentative findings have been

recorded in the said order dated 14.06.2011 nor is the same with reference to any evidence or any material on record. There is complete violation of

the procedure established under Rule 18 (2) of the Bihar CCA Rules, as also the law laid down in this regard in the case of P. Unjab National Bank and

Others. "Versus- Kunj Behari Misra, (1988) 7 Supreme Court Cases 84, relevant portion of Paragraph 18 is quoted hereunder:

18. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived

of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding

of guilt, imposes punishment on the officer.

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Relevant extract of Rule 18 is as follows:

18. Action on the inquiry report.-

(1) ?

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagrees with the

findings of the inquiring authority on any article of charge, record its reasons for

such disagreement and record its own finding on such

charge, if the evidences on record is sufficient for the purpose.â??

9 This Court would notice that in response to the letter dated 14.06.2011, the original writ petitioner has submitted his elaborate response running into

100 pages referring to various judicial pronouncements so as to persuade the Disciplinary Authority to agree with the findings recorded by the Enquiry

Officer. The elaborate response of the original writ petitioner has been dealt by the respondent-authority in a most cryptic manner which shows total

non- application of mind by the authorities considering the response filed by the original writ petitioner. Without assigning any reason and without

applying his mind to the issues raised by the original writ petitioner, a communication has been sent to the original writ petitioner on 31.01.2012 holding

the charges against the original writ petitioner to be proved and asking him to submit his show cause against the proposed punishment of reducing the

original writ petitionerâ??s pension by 15%. Though the same has been issued after the original writ petitionerâ??s response to the notice of

disagreement in a proceeding purported to be conducted under the Bihar CCA Rules 2005, but the same surprisingly refers to Rule 139 of the Bihar

Pension Rules. This order does not show any consideration of the original writ petitionerâ??s elaborate response made after the notice of

disagreement. The authorities apparently have made up their mind to inflict punishment of reducing pension by 15% and asked the original writ

petitioner to submit his response thereto by communication dated 31.01.2012. The original writ petitioner has responded to the same by saying that he

has already communicated his detailed and elaborate response to the notice of disagreement. The same was not considered.

10 The authority apparently is proceeding with close mind and with preconceived intention of imposing punishment proposed against the original writ

petitioner. It is submitted that the notice dated 31.01.2012 was just another instance of a post decisional hearing. He submitted that the nature of this

notice was similar to that as issued communicating the points of disagreement under communication dated 14.06.2011. Prima facie, both the orders

appear to be post decisional opportunity considering the manner in which the same have been issued.

11 The original writ petitioner, thereafter, has been visited with the order of punishment dated 08.02.2013 which is impugned in the instant writ petition.

The submission made on behalf of the petitioner is that the order of punishment has been arrived at as a result of the process which has been

discussed hereinabove which shows total non-compliance with the procedure prescribed under the Bihar CCA Rules. The authorities apparently have

been acting arbitrarily without considering any of the points raised by the original writ petitioner. They have also not considered the reports submitted

by the Enquiry Officer to the extent that none of the charges in relation to the election duty could be sustained in the enquiry. The order of punishment,

therefore, cannot be sustained since the same is product of an exercise which has been conducted totally in violation of the principles of natural justice

without considering findings favourable to the petitioner and without even examining his response made to the various notices issued, as discussed

hereinabove. The duty of the authorities dealing with the disciplinary proceedings to pass speaking orders showing consideration of the issues cannot

be overemphasized. The same is an essential element of the facet of fairness. That seems to have been totally ignored in the instant proceedings.

12 Apart from the aforesaid infirmities in the procedure adopted by the authorities, this Court would also notice the fact that even though the enquiry

report deals only with the charges relating to the administering of oath of the elected representatives, the order of punishment dated 08.02.2013 also

takes into consideration the allegations made, in respect of grant of licence ignoring the departmental norms and circulars to the PDS Dealers,

regarding which enquiry report has not been submitted to the Disciplinary Authority and same has not been served to the original writ petitioner. The

irresistible conclusion is that reference to the allegations in respect of grant of licence to the PDS Dealers is without any basis as this charge has not

been enquired into nor enquiry report has been submitted. The enquiry relies on in purported conclusion of the allegations with respect to grant of

licence dehors departmental procedure. The impugned order of punishment is unsustainable on this ground also. The original writ petitioner has,

thereafter, preferred a review before the Disciplinary Authority under the provisions contained in Rule 24 (2) of the Bihar CCA Rules. A detailed and

elaborate review has been filed highlighting all the irregularities. The exhaustive review of the original writ petitioner is Annexure K to the counter

affidavit filed by the respondent-State. This again is of about 67 pages raising various issues with reference to judicial pronouncements. The same has been considered by the respondent- authorities by Annexure L to the counter affidavit. It is the order dated 18.06.2013 bearing Memo No 9445 issued under the signature of Joint Secretary, Government of Bihar in the General Administration Department. The detailed and elaborate review of the petitioner has been rejected by recording an order, the effective part of which reads as follows:

â?? , , -

15% ?â??

13 Once again, the order passed by the Review Authority is a non-speaking order without assigning any reason and without showing any consideration

on any of the points raised by the original writ petitioner in his review. The respondent, while considering the review petition, has shown total non-

application of mind and abdication of his duty to consider the various pleas raised by the original writ petitioner and to pass an order after assigning

reason. The basic requirement to assign reason has once again been violated, but this time on the review filed by the original writ petitioner.

14 The two orders that is the order dated 08.02.2013 imposing the punishment on the original writ petitioner as also the order dated 18.06.2013

rejecting the petitionerâ??s review application are patently illegal and in contravention of the basic requirement of fairness to consider the points

raised and to assign the reason. The same is an exercise which is also dehors the Rules as has been considered hereinabove.

15 In view of the findings recorded hereinabove, the entire proceedings right from the issuance of notice of disagreement dated 14.06.2011 uptill the

issuance of the order of punishment dated 08.02.2013 are, therefore, held to be unsustainable in law. The entire proceedings are, therefore, set aside.

The order of punishment dated 08.02.2013 is quashed. As a result of quashing of the order of punishment, the order dated 18.06.2013 passed by the

authorities on the review is also unsustainable for the reasons indicated hereinabove and the same is also quashed. The petitioner is, therefore, entitled

to her consequential benefits.

16 The writ petition is allowed to the extent indicated hereinabove.