
(1998) 07 PAT CK 0055
In the Patna High Court
Case No : C.W.J.C. No. 2636/91 (R)

Chhedi Ram

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-07-1998

Acts Referred:

Bihar Service Code, 1952 — Rule 97

Citation : (1998) 3 PLJR 401

Hon'ble Judges : Loknath Prasad, J

Bench : Single Bench

Advocate : M.M. Banerjee, D.K. Chakrabarty and R. Mukhopadhyay, for the Appellant; Ashok Jha, for the Respondent

Final Decision : Dismissed

Judgement

Loknath Prasad, J.—The Petitioner has prayed for quashing the order dt. 7.8.91, that is, Annexure 2 issued by Respondent No. 3 whereby and whereunder the order dt. 12.6.90 regarding payment of salary during the period of suspension was modified.

2. The Petitioner claimed that he was working as a process peon at Khunti and on the ground of alleged misconduct, he was put under suspension on 14.8.87 and a departmental proceeding was initiated as against him in which he participated. After conclusion of departmental proceeding enquiry officer vide order dt. 12.6.90 intimated the Petitioner that by way of punishment, two annual increments of the Petitioner was withheld and the suspension was revoked. The Petitioner claimed that by the aforesaid order only punishment of withholding of two increments was made and then the Petitioner joined his duties, but subsequently vide office order dt. 7.8.91 the previous order dt. 12.6.90 was modified to the extent that the Petitioner will not be entitled for any further salary during the period of suspension, save and except subsistence allowance which he got.

3. The main grievance of the Petitioner is that the Respondent No. 3 is not competent to modify his previous order dt. 12.6.90. Moreover, by the aforesaid order a punishment was already awarded, thereby two annual increments was stopped. So by modification of the order, another punishment was inflicted, and, thus, prayed for quashing this order, that is, Annexure 2.

4. In spite of ample opportunity, no counter affidavit has been filed on behalf of the Respondents and this pretty old matter was heard- in absence of the counter affidavit.

5. Admittedly the Petitioner while working as a process peon at Khunti was put under suspension for alleged misconduct and a departmental proceeding was Initiated. After conclusion of the departmental proceeding, Respondent No. 3 the Enquiring Officer vide Annexure 1, that is, order dt. 12.6.90 found the Petitioner guilty and his two increments was stopped and suspension was revoked with this punishment. Subsequently vide order dt. 6.8.91 Respondent No. 3 on the order of the Dy. Commissioner further ordered that during the period of suspension, the Petitioner will simply be entitled to the subsistence allowance which he got. This very order the Petitioner has challenged mainly on the ground that by the first order already a punishment regarding stoppage of two increments was passed and, thus, withholding of the pay during suspension amounts to another punishment, that too, without any show cause. In support of this contention, learned lawyer for the Petitioner relied upon a case of the Supreme Court reported in Sayeedur Rehman Vs. The State of Bihar and Others, .

6. In the instant case, the Petitioner was definitely found guilty for the misconduct in the departmental proceeding and so vide Annexure 1, that is, order dt. 12.6.90 a punishment was awarded and his two increments were withheld but actually no order was passed regarding as to what will be the period of suspension and whether it will be treated as on duty.

7. The counsel for the State rightly pointed out that Rule 97 of the Bihar Service Code clearly indicates that when the Govt. servant has been fully exonerated he shall be paid full pay and allowance to which he had been entitled during the period of suspension, but Sub-rule (5) clearly indicate that if the Govt. servant is found guilty of misconduct then in such a case his period of suspension will not be treated as on duty unless competent authority has subsequently directed that he shall be so treated as on duty and Sub-rule (3) also lays down that the competent authority will pass necessary order in such cases as to what will be the quantum of pay and allowance during the period of suspension. Under the circumstances as the Petitioner was found guilty during enquiry and he was awarded punishment, so it was obligatory on the part of the competent authority, that is, Respondent No. 3 to indicate as to whether the suspension period of the Petitioner will be treated on duty or he will not be entitled for any further salary, save and except the subsistence allowance. Admittedly no such order regarding the payment of salary or treating the Petitioner's suspension period on duty was passed at the first stage that is, when Annexure-1 was passed and it is

completely silent on this point. If that is so, the subsequent order dt. 7.8.91 that is Annexure 2 which is being challenged by the Petitioner here by the competent authority, indicated the quantum of salary admissible to the Petitioner, that is, Petitioner will not be entitled for any other pay or allowance save and except subsistence allowance which he got during the period of suspension. In such situation, the subsequent order is neither a second punishment nor it is illegal and it is not a modification of the previous order, that is Annexure-1 because in Annexure 1 all these facts which are necessary had not been indicated. No doubt Annexure 2 indicates that previous order was modified, but it is not a modification of the order; rather simply passing necessary order in consequence to Annexure 1 in pursuance of various provisions of Rule 97 of Bihar Service Code. Thus the order is not suffering from any infirmity or illegality. So Saidul Rahman's case (supra) as relied upon by the learned Counsel for the Petitioner, in the facts and circumstances of the present case and the principle laid down in that case is not at all applicable, because in that case the competent authority had already passed necessary order that the employee concerned will be entitled for all his salary during the period of suspension and it will be treated as on duty. But subsequently that order was modified, that too, on the representation of the Managing Committee of the School. In the instant case, in the first order that is, Annexure-1 nothing has been mentioned about the payment of salary during the period of suspension and. this fact has been clarified as rendered under Rule 97 by subsequent order. So it is not the modification of the previous order at all. In that view of the matter, there is no merit in this application and so it is dismissed, but, without any costs.