
(2007) 05 PAT CK 0028
In the Patna High Court
Case No : LPA No. 236 of 1998

Darbhanga Industrial Area Development Authority APPELLANT
Vs
Mr. Sri Chand Prasad Sinha and Another RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2007) 4 PLJR 471

Hon'ble Judges : Navaniti Pd. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Madan Mohan Prasad, for the Appellant; Maha Sewata Chatterjee, Ranjan Kr. Singh for the Respondent and Mr. Abbas Haider for the State, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh & Navaniti Pd. Singh, JJ.—In this appeal what is required to be considered is the meaning of the word "re-instatement". If the word "reinstatement" means re-employment, of course what is being contended by the appellant is correct but if it is not so and it is only permitting an employee already appointed to continue from a future date, then there appears to be no scope of interference in this appeal. The short facts of this case are that the appellant is a body corporate constituted by and under an Act made by the State Legislature. It is, therefore, not Government but an authority within the meaning of Article 12 of the Constitution of India. Under the Act powers have been given for making Rules and Regulations. Some such Rules and Regulations have been made. The Rules and Regulations direct the authority not to create any post, and at the same time not to appoint or promote any person to a post, carrying a salary of rupees one thousand or more. Regulation 17 authorises the Managing Director, subject to the general control of the authority to, amongst others, exercise powers with regard to appointment and disciplinary actions. The Rules and Regulations, as made, do not deal with the conditions of service of the

employees or the procedure to be adopted for initiation and conclusion of disciplinary actions. Rules and Regulations, as made, do not confer any right to an employee, who has undergone disciplinary action initiated by the Managing Director, to prefer an appeal to any person or authority. However, the Regulations make it absolutely clear that the Managing Director shall be under the supervision of the Chairman. The Act by which the appellant has been constituted directs that the body corporate shall have a Board of Directors of which the Chairman, Managing Director and five others shall be members. The hierarchy of the Authority appears to be the Board of Directors followed by the Chairman and then by the Managing Director.

2. The respondent No. 1 was an employee against whom a disciplinary action was initiated by the Managing Director. After the disciplinary action was concluded he passed an order terminating his services, subject to the approval of the State Government. State Government granted approval to the order of termination. Respondent No. 1 then challenged the said order by filing a writ petition, which was registered as CWJC No. 8051 of 1994. During the pendency of the said writ petition, respondent No. 1 wrote a letter to the Chairman and thereby requested him to reconsider the entire matter, which resulted in the subject punishment order, with a further request to recall the same upon such reconsideration. The Chairman instead of himself reconsidering the matter, placed the matter before the Board of Directors. According to the Regulations without the presence of the Chairman and the Managing Director no business can be transacted at any meeting of the Board of Directors. The Board of Directors reconsidered the matter, and thereupon recalled the order of termination and directed reinstatement of the respondent No. 1 subject to the approval of the Government. The Board of Directors also resolved to request the respondent No. 1 to withdraw the pending writ petition.

3. Thereupon on 13th August, 1992 an order was passed reinstating the respondent No. 1. This order made it specific that such re-instatement is subject to the approval of the Government. Inasmuch as the said order was passed, the said writ petition, CWJC No. 8051 of 1989, was dismissed as infructuous. There is no dispute that subsequent to 13th August, 1992 the respondent No. 1 re-joined his services and continued to discharge his duties attached to his post until he superannuated.

4. Inasmuch as the respondent No. 1 was dismissed from service on 11th August, 1989, and inasmuch he was reinstated on 13th August, 1992, the respondent No. 1 was not paid his salaries for the period 11th August, 1989 to 12th August, 1992. Respondent No. 1 prayed for payment of salary for the said period. That was not paid and, accordingly, the respondent No. 1 filed yet another writ petition registered as CWJC No. 9383 of 1996 seeking a direction upon the appellant to pay his salaries for the period 11th August, 1989 to 12th August, 1992 as also time bound promotion.

5. Writ court, proceeded on the basis that the original punishment order passed

in a disciplinary proceeding was interfered by the appellate authority and inasmuch as the appellate authority found that the respondent No. 1 has suffered much and re-instated him without inflicting any punishment, the appellate authority condoned the respondent No. 1 of the charges and, accordingly, directed payment of 50% of the salary due to the respondent No. 1 for the said period.

6. The writ court passed its order on 14th January, 1998. Prior thereto in 1997 an Assistant Secretary of the Government held out to the appellant that inasmuch as termination of the respondent No. 1 has been approved by the Government the order of reinstatement is void and illegal. It is surprising that this was not brought to the notice of the writ court before the said writ petition was disposed of.

7. The right to appeal is a statutory right. Unless such right is granted, no appeal can be preferred. In the instant case, inasmuch as neither the Statute, nor the Rules or Regulations framed thereunder recognize any right to prefer an appeal against a disciplinary order, it goes without saying that no appeal lay against the order passed by the disciplinary authority. However, inasmuch as the Regulation specifically provides that the actions of the Managing Director, i.e. the disciplinary authority, is subject to supervision of the Chairman, any action of the Managing Director can be interfered with by the Chairman. In the instant case, a request was made to the Chairman to interfere with the action of the Managing Director. Although the Chairman himself was authorised to interfere with the same, but he took the matter before the superior body of the Board of Directors and the Board of Directors decided that the matter is such that upon absolving the respondent No. 1 of the charges he should be directed to be reinstated. However, as the Managing Director sought approval of the Government while passing the order of termination so the Board of Directors while deciding to reinstate the respondent No. 1 thought there is a requirement for obtaining approval of the State, when, in fact, there was none. The Act, the Rules and the Regulations require approval of the State Government at the time of appointment or at the time of promotion, but not in the matter of concluding disciplinary proceedings either by termination or by reinstatement.

8. However, if the word "reinstatement" means re-employment of course approval of the State is required. Reinstatement is not re-employment. It is continuation of the previous appointment which may be with or without break in service. There is a controversy in this appeal as to whether Bihar Service Code applies or it does not apply to the appellant. The appellant contends that the same applies. The appellant has brought on record that inasmuch as Rules and Regulations have not been made pertaining to conditions of service, the appellant and other authorities, constituted under the Act, applied the provisions of the Bihar Service Code in relation to the matters pertaining to their employees. Principally we accept the contentions of the learned counsel appearing on behalf of the appellant that the Service Code did apply. If the

Service Code applies to the appellant then in terms of Rule 97 of the Code it was the duty on the part of the disciplinary Authority, at the time of ordering reinstatement, to consider whether or not the absence of the respondent No. 1 for the period in question shall be treated as spent in service. The Board of Directors, who in their supervisory capacity while dealing with a disciplinary matter, did not bother to apply their mind in that regard but at the same time the said Rule directs them not only to do so but also to determine what portion of pay and allowances the reinstated employee is entitled to for the period he remained out of employment. While, however, deciding what salary the employee shall be entitled to it is the mandate of the said Rule that unless the competent Authority specifically directs that the period of absence shall be treated as period spent on duty, the absence from duty shall not be treated as period spent on duty. Therefore, unless it is decided by the competent authority that the period so spent shall be treated on duty, by reason of the mandate contained in Rule 97 of the Code it shall be deemed that the period of absence from duty shall not be treated as period spent on duty. If a person is deemed to have not spent, the period of absence on duty, question of paying him any salary or allowance would not arise. In such circumstances, the person concerned by Rule 97 itself, has been authorised to seek the entire period of absence or a part thereof to be converted into leave of any kind due and admissible to him and lying unspent.

9. There is no doubt that the competent Authority, i.e., the Board of Directors at the time of passing the reinstatement order did not utter a single word as to how the absence of respondent No. 1 for the period from 11th August, 1989 to 12th August, 1992 shall be treated but the order of the Board of Directors suggests that they absolved the respondent No. 1 of the charges. In such event in terms of the mandate contained in Rule 97 of the said Code, there cannot be any question of break in service. This will also be evident from the fact that subsequently when, upon retirement of respondent No. 1, gratuity was paid, the appellant settled the gratuity payable to respondent No. 1 for the entire length of service including that period. Furthermore, although in the writ petition plea for time bound promotion was taken and although by the order under appeal the writ court directed the appellant to consider such claim on its merit, without binding the hands of the appellant in any manner whatsoever and gave the appellant a free hand, but while considering such claim the appellant proceeded on the basis that the respondent No. 1 worked continuously without any break in service. Therefore, when there was no break in service and the conduct of the appellant amply demonstrates that it proceeded on the basis that there was no break in service, the appellant became in law liable to pay such portion of such pay and allowances to the person concerned in terms of the mandate contained in Rule 97 of the said Rules. In term thereof although the respondent No. 1 was entitled to full salary, since he was absolved of the charges, but inasmuch as the respondent No. 1, in fact did not discharge his duties attached to his post during the period in question, the writ court directed payment of fifty per cent of the salaries for the said period. Our conscience, therefore, would not permitted us to

interfere with the order under appeal. In the circumstances, the appeal fails and the same is dismissed. There shall be no order as to costs.