
(2012) 07 PAT CK 0103
In the Patna High Court
Case No : LPA No. 919 of 2012

Dr. Bajrang Deo Narain Sinha APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2013) 2 PLJR 521

Hon'ble Judges : Vikash Jain, J; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Ambarnath Banerjee, for the Appellant; Gautam Bose and Ms. Ratna Das, for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Heard learned counsel for the appellant and learned counsel for the State. The appellant preferred CWJC No. 13323 of 2009 Reported in Dr. Bajrang Deo Narayan Sinha Vs. The State of Bihar, against the order of the Bihar Government dated 4.8.2009 contained in Annexure-1 to the writ petition. By that order the State Government decided to discontinue payment of pension to the petitioner on account of his conviction in a criminal case relating to Animal Husbandry Scam. Annexure-1 shows that in three cases investigated by the C.B.I. arising out of Fodder Scam the appellant was charge-sheeted and in one the trial concluded with his conviction on 25.9.2006. He was awarded punishment of six years rigorous imprisonment and fine of Rs. 1.50 lacs.

2. The main thrust of the argument before the learned single Judge was that since appeal preferred by the appellant against his conviction is still pending before the Jharkhand High Court, the State Government acted illegally and improperly in resorting to provisions of Rule 43(a) and 43(b) of the Bihar Pension Rules for withholding his pension.

3. The learned single Judge has discussed all the submissions and arguments in

detail including the judgment in the case of Dr. Bimal Kant Das rendered by a learned single Judge of this Court on which appellant has placed reliance. The Hon"ble single Judge found judgment of the Apex Court in the case of K.C. Sareen Vs. C.B.I., Chandigarh, to be relevant because the appellant/writ petitioner has not been able to obtain stay of the judgment of conviction itself. Only sentence has been suspended by granting him bail.

4. Rules 43(a) and (b) of the Pension Rules have also been extracted to highlight that the Rules vest powers in the State Government to withhold or withdraw pension or any part of it if the pensioner is convicted of serious crime or if he be guilty of grave misconduct. The provision does not contemplate that such power of the Government shall remain in abeyance till right of preferring appeal has been utilized and exhausted.

5. In the context of disciplinary action on account of conviction and Article 311 of the Constitution, no doubt the circular of the State Government dated 23.8.1963 contained a stipulation in Clause (9) that an appeal being continuation of the trial, action under the proviso to Article 311 would not be taken until the criminal appeal has been disposed of or the time limit for filing appeal has elapsed. But, through the counter affidavit the State Government brought before the writ Court subsequent circular dated 28.10.2003 whereby aforementioned provision in Clause (9) of circular dated 23.8.1963 was deleted.

6. Thus, it is obvious that even the extreme penalty of removal from service on account of conviction is now visualized and permissible on conviction of a Government servant for a grave offence. Hence, in our view the learned single Judge has considered the relevant materials for coming to a proper conclusion and it requires no interference. It may be indicated that the learned single Judge has clarified in the last part of the order that in the event of success of the pending appeal preferred by the appellant/writ petitioner the authority would be required to re-examine the impugned decision/action in the light of judgment/order passed in the appeal.

In view of aforesaid discussion this appeal is found to be without merit and it is dismissed accordingly.