

(2018) 02 PAT CK 0075

In the Patna High Court

Case No : Letters Patent Appeal No. 472 Of 2012 In Civil Writ Jurisdiction Case
No. 17438 Of 2008

Dr. Chandan Prasad Singh

APPELLANT

Vs

State Of Bihar Through Its Secretary And Ors

RESPONDENT

Date of Decision : 05-02-2018

Acts Referred:

Citation : (2018) 2 PLJR 204

Hon'ble Judges : Ajay Kumar Tripathi, J; Nilu Agrawal, J

Bench : Division Bench

Advocate : P.K. Sahi, Dhananjay Kumar, Ranjan Kr. Singh

Final Decision : Allowed

Judgement

Writ application of the present appellant was dismissed by the learned Single Judge vide order dated 11.08.2011. The learned Single Judge refused to quash the order of dismissal passed against the appellant vide order dated 10.07.2004 or order his reinstatement and pay consequential benefits.

The limited facts are that the appellant was posted as District Leprosy Officer, Patna in the year 1990. In the year 1998, he became the Medical Officer Incharge, Primary Health Centre, Mahua in the district of Vaishali. During this tenure, he received a communication from the Chief Vigilance Officer cum Deputy Secretary, Department of Health, Medical Education and Family Welfare dated 22.06.1998 with allegations that the appellant had placed orders for purchase of medicines from M.S.D., Kolkata beyond the allotment of fund and against the policy of the Government with regard to purchases, though he was not a competent authority to do so.

Enquiry was held. The Enquiry Officer was kind enough to exonerate the present appellant. However, the Disciplinary Authority found the appellant to be guilty and punishment of dismissal came to be imposed.

The matter was earlier heard in quite a detail and vide order dated 29.01.2018,

two significant questions were raised, which was required to be answered by the State. The first question was whether a notice of disagreement was given to the appellant against the finding of the Enquiry Officer by the Disciplinary Authority and second whether the so called second show cause notice dated 03.12.2002 could be treated as a second show cause notice, and if it was so, whether it suffered from principles of violations of natural justice or even from the principle that it was a prejudged decision and it was more in the form of information of punishment rather than second show cause.

Counsel for the State has today procured the original file relating to the departmental proceeding. He produced the file and communicated that the records speak for itself and nothing more or less is required to be added over and above the same.

So far as the first question is concerned, there is no notice of disagreement, which is a must. In absence of notice of disagreement and in view of exoneration of the appellant by the Enquiry Officer, the order of punishment of dismissal was uncalled for. The first question, therefore, is answered in favour of the appellant and that is good enough for this Court to set aside the order of dismissal.

If this was not enough, the Disciplinary Authority or the State authorities kept on committing one blunder or the other. The second aspect is the second show cause which forms part of the record and has been brought by the appellant as Annexure-7 to the L.P.A. The Court is tempted to reproduce the second show cause because this is also a bone of contention which will have reflection on the final adjudication :

"8/ए 1- 67/2001

संख्या 1450 (3) दिनांक 3/12/2002

सेवा में,

डा० चन्दन प्रसाद सिंह,

निलंबित चिकित्सा पदा०

प्रा० सेवा केन्द्र, महुआ, वैशाली

सम्प्रति मुख्यालय स्वास्थ्य विभाग

बिहार, पटना ।

विषय:- द्वितीय कारण पृच्छा के संबंध में।

महाशय,

निदेशानुसार उपर्युक्त विषयक अधिगम की छायाप्रति सलग्न करते हुए कहना है कि आपके द्वारा एम.एस.डी. कलकत्ता से अनियमित दवा क्रय करने के कारण सरकार को भारी वित्तीय राशि की क्षति हुई है। अतः राज्य सरकार ने आपको सेवा से बर्खास्त करने का निर्णय लिया है।

अतः इस संबंध में आप अपना द्वितीय कारण पृच्छा पत्र प्राप्ति के एक सप्ताह के अंदर अधोहस्ताक्षरी को उपलब्ध कराने कि क्यों नहीं आपको सेवा से बर्खास्त किया जाय।

विश्वासभाजन

ह0/अस्पष्ट

23.11.2001

सरकार के संयुक्त सचिव"

The submission of learned Senior Counsel on the so called second show cause notice is that strictly it is no notice in the eye of law and secondly, even if it is for the sake of argument treated to be so, can the notice, which indicates the predetermined mind frame of the Disciplinary Authority, stand the test of fairness. He had already made up his mind to impose punishment of dismissal. A line of argument is taken that the second show cause notice was more by kind of information as to the kind of punishment which is going to be imposed upon the appellant and secondly it is directly in the teeth of the principles and decisions which have been held to be so by the Hon'ble Apex Court in several cases including a recent decision rendered in the case of H.P. State Electricity Board Ltd. Vs. Mahesh Dahiya reported in 2017(1) PLJR 277(SC). Paragraph 26 of the said decision supports the line of argument built on behalf the appellant where the Hon'ble Apex Court had to say as under :

"26. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by letter dated 02.04.2008 the Disciplinary Authority-cum-Whole Time Members have already formed an opinion on 25.02.2008 to punish the writ petitioner with major penalty which is a clear violation of principle of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the inquiry report which finds a charge proved against the delinquent. The opinion formed by the Disciplinary Authority-cum-Whole time Members on 25.02.2008 was formed without there being benefit of comments of the writ petitioner on the inquiry report. The writ petitioner in his representation to the inquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the Disciplinary Authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of Disciplinary Authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the inquiry report to the delinquent and before obtaining his comments on the inquiry report. (emphasis supplied). We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the Appellate order has to be maintained."

The above two fallacies, which emerge in the present case, are good enough ground for this court to interfere not only with the order of punishment imposed upon the appellant but also to set aside the order passed by the learned Single Judge dated 11.08.2011 in the writ application of the appellant.

However, since the appellant had already superannuated and the matter related to the year 1991, the Court is not inclined to remand the matter back to the Disciplinary Authorities to re-trace their steps at such belated stage. The appeal, therefore, stands allowed, but so far as the benefit to which the appellant would be entitled to, this Court is not inclined in the given facts to allow benefit of salary and other allowances for the period the petitioner stood dismissed with effect from 10.07.2004 till his superannuation in the year 2014, as admittedly the appellant has not worked for this period, and, therefore, only 50% of the salary and allowance would be payable to him.

The appellant shall, however, derive the benefit of post retiral dues since his order of dismissal stands set aside by this Court.