
(2002) 01 PAT CK 0083

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6316 of 1999

Dr. Chandreshwar Mishra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Citation : (2002) 01 PAT CK 0083

Judgement

S.N. Jha, J.—This writ petition was filed for quashing the order of suspension, dated 3-1-1998, pending departmental proceedings. During pendency of the case, the proceedings came to an end and the petitioner was dismissed from service on 23-5-2000. By filing amendment petition, he has challenged the said order. The facts of the case, shortly stated, are as follows.

2. The dispute in hand is the outcome of appointment of 38 Warders in Bhagalpur Central Jail. In 1984, the then Superintendent of the Bhagalpur Central Jail, Sri P.K. Ganguly, appointed 39 persons as Warders. As all of them failed to clear the tests held in June 1986, they were discharged from service on 26-6-1986. This was done pursuant to the Government directive contained in wireless message No. 617 dated 23-6-1986 of the Home Secretary. It is said that the order of discharge was passed on misreading of the aforesaid message, and a clarification to this effect was made by the Special Secretary, Home (Jail) Department vide his letter No. 8099 dated 1-8-1986. By the said letter, the persons concerned were directed to be re-appointed on the same terms. They were accordingly re-appointed but without any test. On 8-6-1988 the Inspector, General (IG) (Prisons) directed the Superintendent Central Jail, Bhagalpur to regularise the services of the working Warders. Nothing however was done in the matter of regularisation of services. The petitioner joined as Superintendent in the meantime in June 1992. On 16-8-1992, he sought guidance from the IG (Prisons). According to him, no response came to the said letter. In the meantime in September 1992, one of the Warders died in harness which led to agitation for appointment of one of his dependents. The Bihar Jail Mens" Association also made demand to regularise the service of the working Warders.

In the circumstances, on 16-1-1994 the petitioner regularised the services of 38 Warders. The successor-in-office of the petitioner, Sri B.P. Singh, however advertised the posts on 9-10-1994." Some of the Warders filed writ petition before this Court, being CWJC No. 10910/94. On 3-7-1996, this Court quashed the advertisement. The Court however directed the IG (Prisons) to take a decision in the matter of appointment of 38 Warders made by order dated 16-1-1994 (Supra) which had been brought to his notice on 26-2-1996. It may be mentioned that in the counter-affidavit filed in that case the respondents had taken a stand that regularisation of 38 Warders, by order dated 16-1-1996, was not within their knowledge until 26-2-1996. According to the petitioner, the trouble arose from this stage. On 14-9-1996, he was asked to explain the irregularities committed in regularising the services of the Warders. On 3-1-1998, he was placed under suspension and departmental proceeding was initiated. In course of time, the Inquiry Officer submitted his report. After serving second show-cause notice to which the petitioner responded, the impugned order of dismissal was passed.

3. Shri S.S. Dwivedi, learned Counsel for the petitioner, submitted that the findings of the enquiry Officer are based on surmises. The petitioner has been made scapegoat for making the appointments though in almost all jails in the State of Bihar similar appointments were made by the respective Superintendents. He thus questioned the bona fide of the decision to hold departmental proceeding. While the appointees are continuing on the posts, impugned action has been taken to penalise him. In passing the order, the authority has taken into consideration the past conduct of the petitioner though that was not the subject-matter of the charge. The order of dismissal is also bad on account of non-concurrence of the Bihar Public Service Commission. Finally, in any view of the matter, the punishment of dismissal is dis-proportionate and excessive keeping in view the nature of the charges levelled against him.

4. Elaborating his submissions, Sri Dwivedi submitted that though the proceeding was initiated with respect to five charges, one of which, namely No. 3 was not found to be proved by the Inquiry Officer, it would appear that the crux of the charge was that the petitioner had regularised the services of the Warders for personal gains but no material has been brought in course of inquiry as to in what manner the petitioner stood benefited by regularising their services. And so far as the question of violation of the circulars, referred to in Charge No. 2, is concerned, even if it be held that the regularisation was made in violation of those circulars, it could be a case of mistaken interpretation on the part of the petitioner for which he cannot be awarded any punishment, muchless punishment of dismissal. In support of the contention, he placed reliance on Raghunath Gopal Manjire and Another Vs. The Competent Authority and Others, .

5. The scope of the judicial review of administrative action is well settled by decisions of the Apex Court. While making judicial review this Court is not supposed to sit in appeal over the decision of the authority nor make any re-

appraisal of the evidence and/or conclusion reached by them nor can go into sufficiency or otherwise of the materials. The process of judicial scrutiny is confined to finding out the correctness or otherwise of the decision making process. It is significant to point out that no ground as to violation of any statutory rule or rules of natural justice in conducting the departmental proceeding has been taken by the petitioner. The question of finding being based on surmises, and not on evidence, can arise only in a case of "no evidence". Where there is some evidence to support the finding the Court is not supposed to weigh the quantum, though it must be observed that where the finding is found to be perverse or arbitrary, which no prudent person would reach, the Court would not shirk from interfering with the finding and the decision pursuant thereto.

6. After hearing Counsel for the parties and considering the facts and circumstances of the case, I am unable to hold that the impugned findings of the Inquiry Officer are based on surmises. Since the persons concerned are continuing in service and apparently no final decision as regards them has been taken at the appropriate level, it may not be proper to go into the question as to whether the regularisation of their services was in accordance with law or not. They are not party to the proceeding and any adverse finding may affect their case which would not be proper behind their back. It must however be pointed out that though the Special Secretary by his letter dated 1-8-1986 (Supra) had permitted re-appointment of 38 Warders, such re-appointment was to be made on same terms i.e. on the condition of their passing the prescribed tests. It was submitted that in CWJC No. 998/97 this Court disapproved the holding of any selection test having regard to the fact that the period of 14 years had passed in the meantime and strict physical fitness may not be expected from the appointees at this stage, but perusal the judgment also shows that this was the only modification made in the notice dated 30-8-1996 by which the appointees had been asked to appear before the Selection Committee. The learned Judge clarified that the petitioners would have to appear before the Selection Committee and their cases will be considered, taking into account their suitability for the post.

7. The important aspect of the case is that the petitioner was transferred from Bhagalpur Central Jail in December 1993 while the impugned regularisation was made thereafter, on 16-1-1994. A plea has been taken as to compassionate and humanitarian nature of regularisation on the ground that they had been working for long time and one of them had died meanwhile and also that the Jail Mens' Association had been demanding their regularisation. But, the fact remains that though the petitioner joined Bhagalpur Central Jail in June 1992, for one and half years he did nothing of the kind except that he allegedly wrote a letter to the IG (Prisons) on 16-8-1992 i.e., soon after joining, seeking his guidance. The above grounds which have been urged to justify the regularisation were available to the petitioner all these months but he passed the order after he was transferred from Jail.

8. It was submitted that the petitioner is the appointment authority and therefore, he was not required to obtain consent of the IG (Prisons) or any other officer. This submission is not convincing. Though it may be that under the Rules, power to make appointment is conferred on the Superintendent but fact of the matter is that appointments are made only after taking consent of the IG (Prisons), and if the petitioner thought that he was competent to make appointment, it is not understandable as to why he sought guidance from the IG (Prisons) On 16-8-1992. The fact that the appointments were made after the petitioner was transferred from the Jail, in my opinion, creates strong doubt about the genuineness of the appointment. It was submitted that doubt howsoever strong cannot take place of proof. The submission as principle is right but considering the test of proof in departmental proceedings, I do not find much substance in it. It is well known that degree of proof a department proceeding is not the same as the criminal case where charge has to be proved beyond all reasonable doubts.

9. So far as the question of concurrence of the BPSC is concerned, it appears that some correspondence took place between the Department and the Commission but at the end of the day the Commission left it to the discretion of the Government to pass any appropriate order. Article 320 of the Constitution envisages consultation with the Commission and not consent and therefore, even if letter of the Commission dated 5-10-1999 is not treated as its concurrence, the fact remains that the Commission had been duly consulted. Having left the matter to the discretion of the Government, the petitioner cannot complain of any violation of the provisions of Article 320 of the Constitution.

10. All said and done, I am inclined to agree with the Counsel that the punishment of dismissal is harsh and disproportionate considering the nature of the charges. Though I do not intend to make a general observation, judicial notice can be taken of the magnitude of illegal appointments, at will of the authority concerned. Such appointments may be for extraneous consideration, it may also be the result of indiscretion on the part of the authority. Though charges referred to appointment made for personal gains by the petitioner, Counsel for the petitioner appears to be right that no material has been produced to show that he had taken any illegal gratification in making the appointment. Had this been so the matter would have been more serious and stood on different footing. It may also be true, as pointed out by the Counsel with reference to the impugned order, that the unsatisfactory record of service of the petitioner was in the back of the mind of the concerned authority of the Government but that cannot be a ground to award the extreme punishment of dismissal when the misconduct, if any, committed by him in the past was not subject-matter of the proceeding. However, this Court cannot substitute the punishment under Article 226 of the Constitution, it can only direct the Government to reconsider the nature and quantum of punishment. In the facts and circumstances, I am of the view that ends of justice would be served by directing the Government to reconsider the quantum of punishment vis-a-vis the

nature of the charges levelled against the petitioner and in the light of the observations made thereinabove.

11. In the result, this writ petition is allowed in part. The impugned order of dismissal dated 23-5-2000, contained in Annexure-29 is quashed, with a direction to the respondents to reconsider the nature and quantum of punishment. Fresh order in this regard should be passed, preferably, within four months of receipt of a copy of this order. There will be no order as to cost.