
(2008) 06 PAT CK 0007
In the Patna High Court
Case No : CWJC No. 11657 of 2007

Dr. Noorul Ahad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-06-2008

Acts Referred:

Citation : (2008) 3 PLJR 450

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Heard learned counsel for the petitioner and learned counsel for the State. By the impugned order dated 17.8.2007 (Annexure-8) petitioner has been dismissed from service of Bihar Rajya Beej Nigam (hereinafter referred to as "Nigam"). The petitioner has prayed for quashing of the said order of dismissal issued under signature of Managing Director of the Nigam and has prayed for a direction for his reinstatement in service alongwith consequential benefits.

2. The essential facts which are not in dispute disclose that the petitioner joined service of the Nigam as an Assistant in the year 1980. He received promotions and during relevant time he was posted as Regional Manager at Hajipur. Thereafter, he was promoted to the post of Company Secretary-cum-Chief of Finance. During the vacancy on the post of regular Managing Director of the Nigam between 3.1.2005 to 20.2.2005 he also worked as Managing Director of the Nigam and on joining of regular Managing Director he was posted back as Chief of Finance till his dismissal by the impugned order. It is also not in dispute that the new Managing Director joined the Nigam on 2.7.2007 and on 3.7.2007 vide Annexure-1 petitioner was placed under suspension in contemplation of a disciplinary proceeding in respect of acts of omission and commission disclosed in the said order. The memorandum of charge annexed to the formal order ordering for disciplinary proceeding dated 4.7.2007 (Annexure-2) shows that as per

charge No. 1, petitioner was found absent from office without permission on 2.7.2007 at 5:30 P.M. and the office informed that probably he had gone to participate in some programme at the Radio Station, Patna. According to charge No. 2, the petitioner had acted contrary to provision in the Bihar Government Servant Conduct Rules, 1976 according to which a Government servant cannot participate in radio or press programme without permission of Superior Officer. The 3rd charge was that while officiating as Managing Director and when he was not the notified Managing Director under any formal orders of the State Government and when there was ban on appointment in such Corporations by the Government, the petitioner had passed orders on 31.1.2005 for regularizing since of three daily wage employees as regular employees. And the last charge was to the effect that during year 1988-1991 petitioner was Regional Manager, Hajipur and according to audit report an amount of Rs. 1,11,54,762.89/-(One Crore eleven lacs fifty four thousand seven hundred sixty two and paise eighty nine only) remained pending as unadjusted advance which amounted to defalcation of public money and the petitioner made no efforts for adjustment of the said money disbursed by him as advance. Alongwith memo of charge the Managing Director of the Nigam enclosed memo of evidence enclosing (i) statement of petitioner before the Managing Director made on 2.7.2007, (ii) appointment report in respect of three daily wage employees, and (iii) report of internal audit.

3. In the disciplinary proceeding the petitioner submitted his show-cause before the conducting officer in which he claimed that he had obtained verbal permission of the earlier Managing Director for participating in radio telecast which was to be recorded on 2.7.2007 but was unfortunately not recorded on that date. In respect of regularizing three daily wage employees, he admitted the fact that he had made those appointments but claimed that as an officiating Managing Director he had the necessary power to do so and since those employees did not receive any remuneration from the Nigam and were subsequently removed from service as per resolution of the Board of Directors hence his action had not caused any, financial loss to the Nigam. In respect of unadjusted advance at Hajipur the petitioner claimed that he had made all efforts for adjustment of the advances and the responsibility of not taking into consideration certain vouchers were alleged by him upon some employees of the Account section. According to his reply some such vouchers were deposited by some employee later and even during enquiry by CBI in the year, 2002 but those vouchers had remained pending and adjustment had not been made by the Nigam.

4. The enquiry report submitted by the conducting officer held the petitioner guilty of all the charges on the basis of admitted statement of the petitioner before the M.D., lack of any document to show that the petitioner had ever obtained permission for participating in radio telecast and on the basis of admitted appointment of daily wage employees as regular employees by way of regularization. For the charge relating to unadjusted advance, the enquiry officer

relied upon the audit report and petitioner's reply.

5. The petitioner was again given a show-cause notice alongwith copy of the enquiry report to which he submitted his show-cause. The Managing Director considered the second show-cause of the petitioner and the enquiry report and found that charges against the petitioner stood proved. Taking into account the gravity of charges petitioner was subjected to penalty of dismissal vide impugned order dated 17.8.2007.

6. On behalf of petitioner an allegation was made that the concerned Managing Director who passed the impugned order, a member of the Indian Administrative Service had acted mala fide and with vengeance in passing the impugned order. It was next submitted that the Government Servant Conduct Rules as well as the rules governing the disciplinary proceeding applicable to the employees of the State Government could not be applied to the petitioner and therefore the impugned order is bad in law. And lastly, it was submitted that the disciplinary proceeding has not been conducted in a fair manner and charges have been found established without there being any evidence to support the charges.

7. The allegation of mala fide is easy to be made but difficult to be proved. In the present case, there is no material to show that the concerned Managing Director had any personal and extraneous reasons to subject the petitioner to a disciplinary proceeding. In fact, the said officer has not been even impleaded by name. So far as the applicability of the Conduct Rules of 1976 and the rules governing disciplinary proceeding are concerned, no such plea has been taken by the petitioner in his either of the show-cause or in the writ petition. Only in his reply to the counter affidavit of respondents, he has taken the stand that the Conduct Rules of 1976 are meant only for employees of the State Government. It is an admitted position that the Nigam is an instrumentality of the State Government and it is usual for such Corporations to adopt the rules and regulations of the State Government in relation to conduct and disciplinary proceeding. The assertions on behalf of petitioner in respect of Conduct Rules that they were not adopted by the Nigam raises a dispute of fact at a belated stage. However, in any case the unauthorized absence of an employee and his admission that he has been attending radio telecast for which no permission of higher officer could be produced can fairly be treated as instances of misconduct by an employee even in absence of any rules. Moreover in the present case the charge Nos. 2 and 3 are of serious nature relating to appointment of three daily wage employees under the garb of regularization when there was ban on such appointment and the Corporation itself was admittedly doing no business and was unable to pay regular salary to its employees. The last charge relating to huge outstanding advances are also of serious nature. These charges have been found proved by the enquiry officer and the report has been accepted by the disciplinary authority. Hence the plea that the Conduct Rules of 1976 were not formally adopted by the Board of Directors of the Nigam is not of much consequence in the present case.

8. The nature of evidence in a domestic enquiry is dependent upon nature of allegations and the nature of show-cause submitted by the concerned employee. It is not necessary that in every case there should be oral evidence. A perusal of the enquiry report and the impugned order of the disciplinary authority show that the findings in the enquiry and impugned order cannot be treated to be perverse inasmuch as many important facts are based upon admission or upon documents including an audit report. The inferences drawn by the enquiry officer and the disciplinary authority are based upon materials on record and it cannot be said that a person of ordinary wisdom can never come to such opinion on the basis of materials on record. The principles of natural justice have been complied with and on that score the writ petitioner never raised any objection at any stage.

9. Learned Senior Counsel for the petitioner relied upon judgment of the Supreme Court in the case of Union of India (UOI) and Others Vs. J. Ahmed, to submit that lack of efficiency cannot amount to misconduct therefore failure of petitioner to get the advances adjusted cannot be a good charge. In that case the entire charges were of different nature and the ratio of that case cannot help the petitioner in getting relief in this case. In that case it was clarified in paragraph-11 that negligence may also be misconduct depending upon its grave or irreparable resultant damage.

10. Learned counsel for the State has rightly placed reliance upon Supreme Court judgments in the case of (i) B.C. Chaturvedi Vs. Union of India and others, , (ii) Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, , and (iii) State of Gujarat vs. Gajanand M. Dalwadi, (2008) 1 SCC 716 to submit that interference with punishment in a disciplinary proceeding is unwarranted unless it is shocking to the judicial conscience. He has also relied upon judgment of Apex Court in the case of Kuldeep Singh vs. Commissioner of Police, (1992) 2 SCC 10 to submit that finding of guilt cannot be interfered with unless it is based upon no evidence or attracts the Wednesbury principle i.e., no ordinary prudent man could have reached the impugned conclusions on the basis of materials on record. In view of the aforesaid discussions, this Court finds no good ground to interfere with the impugned order of dismissal. In view of gravity of the charges, it is not possible to hold that the punishment imposed is disproportionate or is shocking to the judicial conscience. Hence, this Court finds no merit in the writ petition. It is accordingly, dismissed.