

(2007) 12 PAT CK 0058
In the Patna High Court
Case No : CWJC No. 2645 of 2000

Dr. Prabodh Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:

Constitution of India, 1950 — Article 137, 142, 226
Criminal Procedure Code, 1973 (CrPC) — Section 173

Citation : (2007) 12 PAT CK 0058

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : B.K. Shukla, A.K. Shukla, P. Kr. and A.K. Sinha, for the Appellant;
S.K. Mandal, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Initially this application was filed by the petitioner for quashing the order of suspension, dated 20.4.1999."During the pendency of the writ application the departmental proceeding, which was initiated against the petitioner, was concluded and a punishment of dismissal from service was communicated to the petitioner by the Additional Secretary, Department of Health and Family Planning, Government of Bihar, vide letter No. 9, dated 29.11.2005. Petitioner filed I.A. No. 917 of 2006 for amending the prayer. The amended additional prayer is for quashing the order, dated 29.11.2005, communicated by the Additional Secretary, Department of Health and Family Planning, Government of Bihar, whereby he has been dismissed from service. I.A. No. 917 of 2006 was allowed and the additional relief formed the part of the main writ application. Petitioner is an employee of the State Government in the Department of Health. While posted as Incharge, Medical Officer at Referral Hospital, Bhore, Gopalganj, he sent an indent to M.S.D., Calcutta, for purchasing medicines. The procedure for purchasing medicines in the Government Hospitals, as provided under the different Circulars of the Government, is that the official authorities for purchasing medicines will first place his requirements before the

medicine manufacturing firms of the Government of India. Only in case of non-availability certificate from medicine manufacturing firms an indent can be placed on M.S.D., Calcutta. Prior to sending an indent to M.S.D., Calcutta, it is also required that it should be placed before the Directorate of Health, Government of Bihar. Allegation against the petitioner is that he placed indent No. 728, dated 12.9.1993, on M.S.D., Calcutta, without obtaining non-availability certificate from medicine manufacturing firms of the Government and without assigning a copy of the indent to the Directorate of Health. The indent was prepared by Lallan Prasad Singh. The cost of medicine indented was Rs. 1,60,342/- which was sent under the certificate of posting. The M.S.D., Calcutta, dispatched indented medicines which were received in the hospital and were dispatched to the Health Workers posted at various Primary Health Centers. When, for payment, the M.S.D., Calcutta, placed its demand before the authorities in the Department of Health, the petitioner was put under suspension, a departmental proceeding was initiated. The charges were framed and served upon the petitioner on 31.8.1999. The petitioner had approached this Court earlier in C.W.J.C. No. 5219 of 1999 challenging the order of suspension. dated 20.4.1999. The writ application was disposed of directing the respondents to conclude the departmental proceeding within six months from the date of service of the charge-sheet. The present writ application was filed by the petitioner as the departmental proceeding was not concluded within the period of six months as directed by this Court.

2. The order of dismissal has been challenged by the petitioner specially on three grounds, (1) the major punishment of dismissal has been awarded for minor charge, (2) dismissal is disproportionate and requires reconsideration, and (3) another ground is that due to non-supply of the copy of evidence in the departmental proceeding the order of dismissal has vitiated.

3. In support of the ground that for minor charge major punishment has been awarded and also that the punishment of dismissal is disproportionate the counsel for the petitioner has placed reliance on the official report submitted by the Central Bureau of Investigation u/s 173 of the Criminal Procedure Code. The petitioner was also made an accused by the Central Bureau of Investigation in a criminal case instituted for the same facts. In this case Central Bureau of Investigation submitted final report for closure of case against the petitioner for want of sufficient evidence, and the final report has been accepted. The final report has been annexed with the writ application. On perusal of the final report submitted by the Central Bureau of Investigation it is apparent that during investigation no material came on record to corroborate the dishonest intention of the petitioner in purchasing the medicine from M.S.D., Calcutta. The indented medicines were received by the hospital and properly distributed. The Health Department did not suffer any financial loss on account of purchase of medicine from M.S.D., Calcutta. This finding is also recorded in the departmental enquiry report. The enquiry officer has also recorded a finding that department has not been able to find any evidence of financial misappropriation. In sum and substance only charge which is found proved against the petitioner is that in

violation of the departmental circular and without taking prior permission an indent was sent on M.S.D., Calcutta, for purchasing medicine in excess of the fund allotted for this purpose. The counsel for the petitioner has also submitted that entire service career of the petitioner has been very clean. He has never faced any departmental proceeding. It has also been stated that for similar charge two persons, namely, Lallan Prasad Singh and Sri Om Nath Prasad were also placed under suspension for having violated Government procedure in placing indents for medicine on M.S.D., Calcutta. These two persons have been awarded punishment of censure in the departmental proceeding by the order of the Director-in-Chief, Health Services, holding that there has not been violation of any procedure in placing indents for medicine. First Information Report had also been instituted against these two persons. In this view imposition of punishment of dismissal for similar charge is an example of disproportionate punishment.

4. In support of his contention, the petitioner has placed reliance on a decision reported in Ramesh Chander Singh Vs. High Court of Allahabad and Another, - In this case punishment of dismissal was awarded against the Judicial Officer for allegation of passing an improper judicial order. The Apex Court held that punishment appears to be disproportionate to the alleged lapses. Further, reliance has been placed by the petitioner on a decision reported in Bhagat Ram Vs. State of Himachal Pradesh and Others, as well as Mohd. Shafi Vs. Mohd. Rafiq and Another, . The counsel for the petitioner has also submitted that instead of remanding the matter to the appropriate authority, considering the facts of the case it will be appropriate that the order of punishment be quashed by this Court. In this regard, he has placed reliance in Mohd. Shafi Vs. Mohd. Rafiq and Another, . In paragraph 14 of this decision relying on Supreme Court decision the following findings have been recorded:-

"14. In this regard the petitioner has brought to my notice a decision rendered by the Hon"ble Supreme Court in the case of B.C. Chaturvedi Vs. Union of India and others, . The petitioner contends that in terms of this decision it is not only open to the High Court to interfere in the order of punishment on the ground that the same is disproportionate but to shorten the litigation the High Court has requisite authority to impose proper punishment with cogent reasons in support thereof. The Hon"ble Supreme Court has held that the High Court while exercising its powers under Article 226 of the Constitution could also pass orders to render complete justice to the parties and it is misconceived that because of Article 142 this power was available only to the Supreme Court."

Paragraph 23 of the Supreme Court decision in case of B.C. Chaturvedi vs. Union of India is being relied and quoted hereinafter:-

"23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provisions

like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in *Shivdeo Singh and Others Vs. State of Punjab and Others*, , that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like of High Court. Of course, this power is not as wide which this Court has under Article 142. That, however, is a different matter."

5. Counter affidavit has been filed on behalf of the State. It has been submitted by the counsel for the State that the petitioner has been found guilty for placing indent of medicine to M.S.D., Calcutta, for which he was not authorized. In the departmental enquiry it has been found that he ignored the procedure and limit of allotment for misutilizing of public money.

6. What I find that this statement in the counter affidavit as well as submission of the counsel for the State is against the record. In the enquiry report also there is no finding regarding misutilization of public money. In the investigation also there is no evidence in this regard.

7. Counsel for the State has also submitted that the petitioner has alternative remedy by way of filing appeal which he has not availed. In reply, the counsel for the petitioner has submitted that there is no appellate forum available for challenging the punishment order passed by the State Government only remedy available is by filing writ application.

8. Considering the entire material I find that the case of the petitioner is that he sent an indent to M.S.D., Calcutta in accordance with the procedure for procurement of medicines for Government hospitals and was duly authorized to assess the requirement of medicine for his hospital. But in the enquiry report it has been stated that Circular No. 266, dated 22.9.1990, which is being relied by petitioner in his defence do not furnish him with the jurisdiction to place indent with M.S.D., Calcutta. However, in the enquiry report a finding has been recorded that there was no intention for misappropriation of the Government fund though it can be treated as a financial irregularities. Petitioner before the enquiry officer had also submitted photostat copy of letters issued to I.D.P.L. in order to prove that in compliance of the Government Circular he initially submitted his requirement before the Government owned company for supply of medicine, only on their refusal indent was issued on M.S.D., Calcutta. What I further find that in the departmental proceeding, the charges relating to financial irregularities and disobedience of the departmental circular only partially proved and it has also been admitted in paragraph 13 of the counter affidavit.

9. In the counter affidavit there is no specific reply as to why for similar charges Lallan Singh was only awarded punishment of censure while in case of petitioner punishment of dismissal has been imposed. When similar charge was considered

to be minor charge in case of one Government servant and in that case another Government servant should not have been awarded a major punishment, like dismissal. Rightly, it has been pointed out by the petitioner that the punishment is disproportionate to the charge leveled against him.

10. The order of punishment is quashed. Respondent No. 2, the Commissioner-cum-Secretary, Department of Health, Medical Education and Family Planning, Government of Bihar, is directed to reconsider the punishment part. Since sufficient time has elapsed as the proceeding has started long time back, respondent No. 2 will pass necessary order without any further delay. This application is allowed.