

(2005) 05 PAT CK 0041
In the Patna High Court
Case No : CWJC No. 8858 of 2003

Dr. Ram Bahadur Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-05-2005

Acts Referred:

Citation : (2005) 05 PAT CK 0041

Final Decision : Allowed

Judgement

Chandramauli Kumar Prasad, J.—This application has been filed for quashing the notification as contained in memo dated 2.5.2003 (Annexure 1) whereby petitioner has been visited with the penalty of censure and break in service for the stipulated period. Said order further directs that the petitioner shall not be entitled for any other emoluments other than the subsistence allowance already paid to him.

2. Short facts giving rise to the present application are that the petitioner at the relevant time was posted as Medical Officer at Primary Health Centre, Sahar in the District of Bhojpur and for his unauthorised absence for the period 24.5.1994 to 31.7.1994 and 22.8.1994 to 26.9.1994, by order dated 27.9.1994 he was put under suspension. Later on by order dated 30th of August, 1999, the order of suspension was revoked.

3. By notification dated 16.1.2002, petitioner was granted earn leave for the period 24.5.1994 to 31.7.1994 and by order dated 28.3.2001 (Annexure 7 series) he was granted earned leave for the period 22.8.1994 to 26.9.1994.

4. Even after the order of suspension was revoked salary was not paid to the petitioner for the period of suspension that is 24.5.1994 to 31.7.1994 and 22.8.1994 to 26.9.1994, he preferred CWJC No. 785 of 2003 (Dr. Ram Bahadur Singh v. State of Bihar and Ors.) before this Court. In the said case, petitioner, raised the grievance that when the period of alleged absence having been regularised by grant of earn leave, no proceeding can be initiated against him.

Said plea was negated by this Court by order dated 21.2.2003 in the following words :

"The case of the petitioner to this effect cannot be accepted for regularisation of the period of absence is for different purpose altogether. If such regularisation is not allowed it may result in break-in-service which obviously would cause serious prejudice to the employee concerned. Any decision to regularise the period of absence does not by itself mitigate the misconduct arising out of the absence for which he can be proceeded against."

5. During the hearing of the said writ application, departmental proceeding was initiated against the petitioner for his unauthorised absence by order dated 17.2.2003. Petitioner challenged the same by filing an interlocutory application and prayed for its quashing on the ground that the departmental proceeding cannot be initiated at such a distance of time. This Court by the said order accepted the plea of the petitioner in the following words :

"An interlocutory application has been filed on behalf of the petitioner challenging the decision of the Government to initiate the departmental proceeding. It is submitted that in view of decision of the Apex Court in *The State of Madhya Pradesh Vs. Bani Singh and another*, it is not open to the respondents to initiate any departmental proceeding with respect to misconduct of 1994 after nine years. This submission of the petitioner appears to be well founded. It has been held in the above said decision that where the misconduct was known to the department but no disciplinary action was taken, it cannot be allowed to initiate proceeding and on the ground of staleness of charge the proceeding can be quashed. The decision, therefore, seems to cover the submission of counsel for the petitioner."

6. Thereafter, it seems that the State Government, considered the case of the petitioner, purportedly in the light of the direction of this Court dated 21.2.2003 passed in CWJC No. 785 of 2003 (Annexure 9) and inflicted the penalty of censure and break in service for the period the petitioner was unauthorisedly absent. It has been further directed that the petitioner shall not be entitled for any emolument other than the subsistence allowance.

7. Counter affidavit has been filed on behalf of respondent Nos. 1 and 2 in which it has been stated that the punishment inflicted by the impugned order of break in service has been rescinded vide letter dated 5.12.2003. In the counter affidavit the answering respondents have attempted to justify the rest of the punishment.

8. Mr. R.N. Mukhopadhyaya appearing on behalf of the petitioner submits that in the departmental proceeding, petitioner has not been held guilty and as such the punishment of censure or for that matter direction for payment of only the subsistence allowance for the period of suspension cannot be given. He points out that, in fact, this Court in the writ application filed by the petitioner earlier has quashed the initiation of the departmental proceeding and in that view of the

matter, the punishment inflicted on the petitioner is completely without jurisdiction.

9. JC to AAG II appearing on behalf of respondents, however, contends that in the facts of the present case, no fault can be found out in the impugned order.

10. Having appreciated the rival submission, I find substance in the submission of Mr. Mukhopadhyaya, I have quoted in extenso the order passed by this Court in the writ application filed by the petitioner earlier in which this Court has clearly observed that it is not open to the respondents to initiate departmental proceeding in respect of misconduct committed in 1994. The order of this Court has to be understood in the context it was given and from its perusal, I have no manner of doubt that this Court quashed the order initiating the departmental proceeding. Even if I assume that this Court had not quashed the order initiating the departmental proceeding that would also make the impugned order legal. There is nothing on record to show that in the departmental proceeding petitioner has been held guilty. In that view of the matter, one cannot escape from the conclusion that the petitioner has been exonerated from the charge. Once it is held so, the punishment of censure and direction that petitioner shall not be entitled for any emolument other than the subsistence allowance cannot be allowed to stand.

11. In the result, the application is allowed impugned order as contained in notification dated 2.5.2003 (Annexure 1) is quashed. In the facts and circumstances of the case, there shall be no order as to cost.