

(2008) 03 PAT CK 0022
In the Patna High Court
Case No : CWJC No. 452 of 2005

Dr. Smt. Annapurna Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-03-2008

Acts Referred:

Citation : (2009) 2 PLJR 668

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Sunil Kumar Karn, for the Appellant; H.S. Roy, for the Respondent

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—In this writ application, the petitioner has challenged the order of punishment dated 11.10.03 whereby and whereunder the petitioner has been subjected to a punishment in a departmental proceeding for remaining absent from duty for the period 22.3.83 to 17.12.89 not only by way of break in service for the period 22.3.83 to 17.12.89 but also of stoppage of three increments with cumulative effect. Learned counsel for the petitioner while assailing the impugned order has raised a short but a very attractive submission inasmuch as it has been submitted that it was the specific case of the petitioner in the written statement of her defence that she had proceeded on leave without giving information. To the extent it had been categorically mentioned in the written statement of defence that she had submitted an application for leave to the Director, T.B. Centre, Darbhanga on 21.3.83 and the said application for grant of earned leave was also duly forwarded by her aforesaid Controlling Authority vide his letter dated 426 dated 7.5.83. The petitioner in this context has further relied on the reminder sent by the Director of T.B. Centre, Darbhanga vide memo No. 229 dated 29.2.84 wherein decision with regard to pending leave application of the petitioner was sought to be taken by the competent authority. The counsel for the petitioner therefore, submits that these materials which were brought in the written statement of defence, were required to be considered in their true

perspective as that could have made out a case of non-grant of leave to her despite information given by her inasmuch as till the refusal of the leave so applied by the petitioner by the competent authority, it could not be held that the petitioner was unauthorizedly absent from duty.

2. This Court has very carefully perused the enquiry report dated 16.8.95 as contained in Annexure-6 to the writ application. The enquiry report to say the least is a perverse enquiry report inasmuch as it appears that the Enquiry Officer was not even aware of the basic norms of conducting a departmental proceeding. The Enquiry Officer in paragraph 3 has noted the aforesaid defence of the petitioner that she had duly informed the authority with regard to her remaining absent from duty from time to time and that her leave applications were pending for a final decision but unfortunately, thereafter the Enquiry Officer had not even cared to record a finding on such a plea of the petitioner. There is nothing on record to show at least in the enquiry report that department had led any evidence to prove the aforesaid charge against the petitioner and yet he had held the petitioner guilty of the aforesaid charge without any material against her. The inquiry report in fact has only proceeded on the basis of the examination of the written statement of defence of the petitioner and the charges are said to have been proved only by perusing and rejecting the defence as taken by the petitioner in a most mechanical and slipshod manner. This is not the way the departmental proceeding is to be conducted for proving a charge. In that view of the matter, this Court is of the considered opinion that the enquiry report dated 16.8.95 is wholly perfunctory both in fact and in law. Since the order of the punishment dated 11.10.03 is based only on the ground of charge having been found to be proved in the Enquiry Officer's report, without there being any fresh application of mind by the Disciplinary Authority, this Court has no option but to quash both enquiry report dated 16.8.95 as contained in Annexure-6 as also the order of punishment dated 11.10.03 as contained in Annexure-11 to the writ application.

3. Normally, having quashed enquiry report of the departmental proceeding on a purely technical ground, this Court ought to have remitted the matter back for holding fresh enquiry against the petitioner from the stage of framing of charge itself but in view of the fact that the petitioner has already gone out of the disciplinary control of the State Government which has allowed voluntary retirement of the petitioner w.e.f. 12.1.04, holding of enquiry afresh will now serve no purpose. Therefore, taking the line of least resistance, this Court would hold that the petitioner's pending leave application from 22.3.83 to 17.12.89 having been not rejected by the competent authority she cannot be held absent from duty by way of being on unauthorized leave as she was never asked to report back on duty in the relevant period by her higher authorities.

4. The petitioner however will not get any benefit by way of payment of salary the period of absence from her duty i.e. for the period 22.3.83 to 17.12.89 and this period will also not be counted for payment of her gratuity is concerned, but

then this period from 22.3.83 to 17.12.89 will be counted towards her qualifying service for the purpose of grant of pension. In other words the petitioner's order of punishment with regard to break in service from 22.3.83 to 17.12.89 and stoppage of her three increments with cumulative effect will stand quashed but she will not get any benefit either by way of payment of her salary/remuneration or even payment of gratuity for the period of her absence and the said period will be only counted towards her qualifying service for calculation of pension.

5. Such an order has been passed by this Court on two counts namely that the petitioner has already been allowed voluntarily retirement with effect from 12.1.04 and also because the order of punishment dated 11.10.2003 came to be passed after 14 years of her alleged misconduct being absence from the duty despite the fact that the respondents were all along aware of such misconduct as would be appeared from the fact that the charge against the petitioner for the said misconduct was framed on 19.4.1995 and yet the final order of punishment was passed only on 11.10.2003. Such gross delay in initiating and completing the departmental proceedings has been deprecated by the Apex Court in the case in the The State of Madhya Pradesh Vs. Bani Singh and another, .

6. As a matter of fact the petitioner appears to have inflicted such a punishment on 11.10.2003 while allowing her to take retirement w.e.f. 11.1.2004 on her request made on 7.11.2002. In the opinion of the Court, the petitioner has undergone punishment of remaining under mental and financial strain, than what she actually deserved for being absent from duty for the period 22.3.1983 to 17.12.1989. In the result, this application is allowed with the aforementioned observations/directions.