
(2011) 07 PAT CK 0056
In the Patna High Court
Case No : CWJC No. 10390 of 2008

Dr. Usha Jaiswal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Civil Services (Classification, Control and Appeal) Rules — Rule 55

Citation : (2012) 1 PLJR 143

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Judgement

J.N. Singh, J.—Heard learned counsel for the petitioner as well as learned counsel for the State.

2. During the pendency of this writ application, respondents have passed a final order in the proceeding initiated against the petitioner which has been brought on record as Annexure-9 with I.A. No. 5064 of 2011 with a prayer for liberty to the petitioner to challenge the same in this writ application. The said order has also been brought on record by the respondents with the counter affidavit as Annexure-C. There is no opposition to the I.A.

3. The interlocutory application is allowed. Liberty is granted to the petitioner to challenge the said order of termination.

4. It appears to the Court that, on many occasions, in order to cover up their lapses, the Government officials pass orders giving a complete go by to requirements of law. This is one such case where higher functionary of the Government in the rank of the Joint Secretary in the Department of Health has not cared to look into the legal provisions and powers of the authorities to initiate action against the petitioner.

5. Learned counsel for the petitioner has challenged the order of punishment vide impugned notification contained in Memo No. 972(9) dated 6.10.2009

(Annexure-9) by which, accepting the second charge against the petitioner as proved, in a very cryptic manner, a punishment has been imposed to the effect that period of her absence between 10.12.1996 to 3.11.2000 shall be treated as break in her service and shall not be counted for fixation of pension. Learned counsel for the petitioner has rightly pointed out that the enquiry officer did not find both the charges proved against the petitioner. In respect of charge of her unauthorized absence between the said period 10.12.1996 to 3.11.2000, after noticing the evidence produced by the petitioner in respect of intimation to the Department from time to time of her illness, the enquiry officer has held that the said period cannot be considered as unauthorized absence. In spite of this, the disciplinary authority has taken this charge as proved and has issued second show cause notice vide Annexure-5 without differing with the findings of the enquiry officer. Learned counsel for the petitioner has rightly submitted that on the basis of this misreading of the enquiry report, the disciplinary authority has passed the order of punishment for treating the said period as break in petitioner's service, disentitling her benefits of pension. This non-application of mind by the Disciplinary Authority is sufficient to quash the impugned order of punishment passed against the petitioner.

6. But more glaring error of law appearing from the record is that, after superannuation of the petitioner with effect from 31.1.2005, a departmental proceeding is being initiated against her by resolution dated 17.6.2005 under Rule 55 of the Civil Services (Classification, Control & Appeal) Rules. In what manner, this Rule authorizes the Government to initiate a departmental proceeding against a retired employee is beyond comprehension of this Court. This inherent defect in initiation of proceeding was sought to be rectified by Annexure-A with the counter affidavit by converting the same into a proceeding under Rule 43(b) of the Bihar Pension Rules. Under Rule 43(b) of the Rules, only those proceedings stand converted which are pending from before superannuation of a Government servant. If no proceeding was pending from before, the respondents could only initiate a fresh proceeding against the petitioner under Rule 43(b) of the Pension Rules but subject to the rider contained in the Rules of limitation of 4 years. Obviously, that too they could not do since petitioner superannuated on 31.1.2005 and her alleged period of unauthorized absence ended on 3.11.2000 i.e. more than four years prior to superannuation.

7. The facts, as noticed above, show that from the day one, respondents had completely thrown the requirements of law to the wind and, just to cover up their lapses, issued notification initiating an inherently defective proceeding and continued the same.

8. In the circumstances, this court finds that the entire proceeding initiated against the petitioner by Annexure-2 was without jurisdiction. Resultantly, the punishment order is also in violation of law. Therefore, punishment order, as contained in Annexure-9, as well as entire proceeding initiated against the

petitioner by Annexure-2, are quashed. Respondents are directed to issue orders for payment of retiral benefits and other consequential monetary benefits to the petitioner within three months from the date of receipt/production of a copy of this order.