
(1994) 02 PAT CK 0039

In the Patna High Court

Case No : Letters Patent Appeal No. 7 of 1992

Gopaljee Jha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-02-1994

Acts Referred:

Citation : (1994) 02 PAT CK 0039

Final Decision : Dismissed

Judgement

K.S. Paripoornan, C.J.—These are connected cases. Common questions arise for consideration in this batch of three cases. They are preferred against the common judgment of S.K. Singh, J. dated 10.1.1992 rendered in Civil Writ Jurisdiction Case Nos. 713, 714 and 715 of 1988. The Appellants are Police Constables in the State of Bihar. Disciplinary proceedings were initiated against them. They were dismissed from service. Annexure-I is the order of dismissal dated 19.11.1986 passed by the Superintendent of Police, Annexure-II is the appellate order passed by the Deputy Inspector General of Police dated 20.6.1987 and Annexure III is the order passed by the Inspector General of Police dated 30.12.1987. The said annexures were challenged before the learned single Judge; but without success. The Petitioners in the writ applications have come up in Letters Patent Appeal.

2. We heard Counsel.

3. Three points were urged in support of the appeals. They are: (1) The Appellants were not supplied with a copy of the enquiry report. This is a fatal infirmity to the orders of dismissal. The relevant rule in the Police Manual as also the plea taken up in this regard before the Inspector General of Police were referred to. Reliance is placed on the decisions in Union of India and others Vs. Mohd. Ramzan Khan, and Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . (2) The appellate order affirming the order of dismissal is not a speaking order. No reason is given in the appellate orders. Since the appellate authority was exercising quasi-judicial powers, the failure to give reasons in the

appellate orders is fatal; and (3) the orders impugned affect the livelihood of the Appellants. So, procedural infinities should have been held to be fatal.

4. I am of the view that there is no substance in this batch of appeals. It is seen from the judgment under appeal, delivered by the learned single Judge dated 10.1.1992, that only two pleas were raised before him. Paragraph 7 of the judgment appealed against is to the following effect:

7. Learned Counsel appearing on behalf of the Petitioners has mainly challenged the orders on two counts; firstly the appellate orders, as contained in Annexures 2 and 3 are not speaking orders and as such, they are fit to be set aside and secondly that the punishment awarded to the Petitioners is disproportionate and as such, they have prayed for quashing of Annexures 1, 2 and 3 to the respective writ petitions.

The learned single Judge has discussed the plea of the Petitioners in paragraph 8 of the judgment, the contents of the counter affidavit in paragraph 9 and the submission of the State in paragraph 10, and has proceeded to give the reasons for not accepting the plea of the Appellants. From the above, it would be seen that non-supply of the enquiry report was not at all urged before the learned single Judge as a ground of attack against the impugned orders. But, it was urged by Appellants' counsel that the plea was taken before the learned single Judge; but was not considered. I am of the view that such a plea is not open to the Appellants in the appeals. If there was misconception or mistake in court records, that should be corrected by review. As to what happened in court or what were the pleas urged before the learned single judge should be decided with reference to the recitals contained in the judgment. Delivering the judgment of the Bench in State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, , Chinnappa Reddy, J. stated the law thus:

4 We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done Public Policy bars us Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation" (Per Lord Atkinson in AIR 1926 136 (Privy Council)). We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in Court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other, evidence. If the Judges say in their judgment that something was done said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a

statement that had been made in error (Per Lord Buckmaster in *Madhusudan v. Chandrabati* AIR 1917 PC 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there....

In the light of the above statement of the law, we hold that the plea that non-supply of the enquiry report vitiates the dismissal orders, is a new plea taken up for the first time in the Letters Patent Appeals. I am not inclined to allow the Appellants to raise the said plea, for the first time in these appeals. It also plausible to say as seen from the narration in paragraph 9 of the judgment, that the enquiry report was made available to the Appellants and they had knowledge of the same and it is in pursuance thereto they filed the show-cause and dealt with the findings of the enquiry report. Since point No. 1 raised in these appeals is a new plea, I decline to entertain the same.

5. It was urged that the appellate orders passed against the Appellants are not speaking orders. It is true that the appellate authority is enjoined "to consider" the appeals judicially. But, it is not the law that even in cases where the appellate authority agrees with the primary authority, he should state all the reasons separately. Delivering the judgment of the Constitution Bench in *S.N. Mukherjee v. Union of India* (AIR 1990 SC 1784), Agrawal, summed up the legal position in such cases in paragraphs 34 and 35 of the judgment. In paragraph 35 of the judgment, the learned Judge has concluded thus:

... In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative

authority exercising quasi-judicial functions

irrespective of the fact whether the decision

is subject to appeal, revision or judicial

review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of

law. The extent and nature of the reason should depend on particular facts and circumstances, what is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

In the light of the above statement of the law by the apex court, the second point urged (before us) has no substance.

6. The last and the final plea urged before us was that the impugned orders affect the right to livelihood of the Appellants. It may be so. But, the right, if any, is affected only, as a result of lawful orders passed by competent authorities in

accordance with law; the Appellants cannot have a grievance as the dismissal orders are valid and sustainable. They should be given effect to. The plea that removal from service will affect their livelihood, is not open to the Appellants, in such circumstances.

7. We hold against the Appellants on all the three points urged before us. No other plea was taken at the hearing of the appeals. The appeals are dismissed.

N.K. Sinha, J.

8. I agree.