
(2004) 08 PAT CK 0061
In the Patna High Court
Case No : CWJC No. 6333 of 2004

Hira Prasad Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Citation : (2004) 08 PAT CK 0061

Final Decision : Dismissed

Judgement

R.M. Prasad, J.—In this writ petition, petitioner has sought for quashing of the order dated 14.6.1999 of the Director, Health Services, Bihar, Patna, contained in Annexure-3, communicating the Government decision cancelling the order contained in Memo No. 811 (11) dated 2.12.1994 accepting his voluntary retirement and dismissing him from service with effect from 1.10.1994, and, has further sought for direction to the Respondents for payment of his retiral dues including pension, gratuity and leave encashment with effect from the date of acceptance of his voluntary retirement i.e. 2.12.1994.

2. In short, relevant facts are that on 6.4.1960 the petitioner was appointed as Superior Field Worker in Health Department and in the year 1968 he was adjusted on the post of Basic Health Worker at Simari Bakhtiarapur Block. He was transferred from time to time and ultimately applied for voluntary retirement while posted at Primary Health Centre, Murliganj, Saharsa, which was accepted by Health Commissioner and the same was communicated by the Additional Director, Health Services on 2.12.1994 vide Annexure-2 from the date of issue of the said letter. Later by the impugned order, the order of acceptance of his voluntary retirement has been cancelled and he has been dismissed from service with effect from 1.10.1994.

3. In the counter affidavit filed on behalf of Director-in-Chief, Health Department, Bihar, Patna and Chief Malaria Officer, Bihar, Patna (Respondent Nos. 3 and 5) it is contended that the writ petition is not maintainable due to laches and delay. The petitioner has challenged the order dated 14.6.1999 (Annexure-3) after

lapse of about five years. Apart from this, according to the case of the Respondents, the petitioner suppressed the important fact that a criminal case was running against him since 1981 at the time he represented seeking voluntary retirement and by suppressing the said fact he got the order of acceptance of his voluntary retirement apprehending conviction in the criminal case. However, when the matter came in the notice of Respondent No. 4 through letter No. 145 dated 20.5.1995 of Prabhari Chikitsa Padadhikari, Murliganj, Madhepura that the petitioner was convicted in criminal case and was in jail, action was taken and the order of voluntary retirement was stayed vide letter No. 556 dated 21.10.1995. The details were asked from Prabhari Chikitsa Padadhikari, Murliganj vide letter No. 378 (11) dated 31.5.96. Photostat copy of the said documents have been annexed as Annexures-B, C and D to the counter affidavit. In the counter affidavit, it is stated that the petitioner was in jail from 1.10.1994 and it was his duty to inform the Respondents, which he suppressed. It also came to the notice that the petitioner moved for his bail in this Court in Cr. Appeal No. 515/94, which was rejected vide order dated 25.9.1995 (Annexure-E). It is, thus, contended that the petitioner was guilty of murder and convicted in Sessions Trial No. 4/83 on 30th September, 1994 and his bail application was also rejected by this Court, and, hence, the letter of termination was issued on 14.6.1999 with effect from 1.10.1994. It is stated that this Court has not quashed the conviction order of the Additional Sessions Judge, Saharsa till date. It is contended that G.P.F. and G.I.C. do not come under the retiral benefits, and, thus, cannot be withheld as it is based on contribution made by the person, but, after termination from service pension and gratuity are not paid.

4. A reply affidavit has been filed on behalf of the petitioner, in which, it is stated that the Department was fully acquainted about his involvement in a criminal case, inasmuch as the petitioner was suspended on this account itself by the order dated 5.6.1982 of the Incharge District Maleria Officer with effect from 30.1.1982 and it was continued till it was revoked on 31.1.1986, following grant of bail to him. According to the petitioner, these facts are fully incorporated in petitioner's service book, and, thus, there was no suppression of fact as alleged. In support of this photostat copy of relevant page of service book has been annexed as Annexure-7.

5. Learned counsel for the petitioner contended that the petitioner has been released on bail by this Court vide order dated 5.1.2001 passed in Criminal Appeal No. 535 of 1994 preferred by him against his conviction. As such, he contended that in view of the decision of this Court in the case of Ram Nandan Prasad v. State of Bihar and Ors.. (CWJC No. 63 of 1994 disposed of on 27.1.1995) dismissal order is not sustainable until the disposal of the appeal. It is true that in the case of Ram Nandan Prasad v. State of Bihar, (supra) the petitioner had challenged the order of his dismissal from service passed in exercise of power under proviso (a) to Article 311(2) of the Constitution of India on the ground that he was convicted in a criminal case. He preferred Criminal Appeal No. 209 of 1989 against his conviction which was admitted and he was

released on bail. Learned counsel for the petitioner in the said case had submitted that in view of the Government circular dated 23rd August, 1963, which provided that since appeal is in continuation of the trial, the action under the aforesaid proviso should not be taken until criminal appeal has been disposed of or time limit for filing appeal has expired, the power under the aforesaid proviso cannot be exercised. This Court considering the fact that the appeal against conviction was admitted and in which interim order was passed in favour of the petitioner, held that the authority were not justified in exercising power under the aforesaid proviso and passing the order impugned therein in view of the Government circular. Accordingly, the order of dismissal was quashed, but, it was observed that the said order would not preclude the authorities from exercising the power under the aforesaid proviso after disposal of the appeal. In the present case, the question is not as to whether the dismissal order can be sustained under the aforementioned circumstances. The question, in fact, is as to whether the petitioner can claim for pension and gratuity until the disposal of criminal appeal filed by the petitioner. In view of the observation made in the order of this Court passed in the case of *Ram Nandan Prasad v. State of Bihar* (supra) also the authorities are not precluded from exercising the power under the aforementioned proviso after disposal of the appeal. As such, in my opinion, until the conviction is set aside the validity of the impugned order cannot be assailed in view of the decision of this Court in the case of *Ram Nandan Prasad v. State of Bihar*, (supra).

6. Learned counsel for the petitioner, further, contended that it is true that the fact regarding conviction is not mentioned in the representation filed by the petitioner seeking voluntary retirement as he was not convicted till then, but the Department was very much aware about the pendency of the criminal case against the petitioner on account of which he was placed under suspension after his arrest. He did not dispute that before the order of acceptance of voluntary retirement of the petitioner was passed on 2.12.1994 he was convicted, and, this fact was never brought to the notice of the State authority. However, he contended that the reason for not bringing the said fact to the notice of the State authority was that the petitioner was in jail. He, thus, contended that the State authority have no power to recall the order of acceptance of voluntary retirement of the petitioner that too after lapse of almost five years. In support of this he placed reliance on the decision of this Court in the case of *Ram Shankar Prasad Singh v. State of Bihar and Ors.*, reported in 2001 (3) PLJR 274.

7. Learned counsel for the Respondents submitted that the said decision is of no help to the petitioner in the facts and circumstances of the present case. Learned counsel for the Respondents contended that in the said case punishment order which was passed after superannuation from service was under challenge without proceeding in terms of the proviso to Rule 43(b) or Rule 139 of the Bihar Pension Rules and under such circumstances the order of punishment was quashed. According to the learned counsel for the Respondents, in view of the law settled by the Apex Court as well as by this Court in the case of *Union of India and*

Another Vs. Tulsiram Patel and Others, , Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and Narain Mahto and Ors. v. Food Corporation of India and Ors., reported in 1997(1) PLJR 432, after conviction and sentence under criminal law resulting in dismissal from service even the plea of opportunity of being heard before passing of the order of dismissal is no longer available to the petitioner, and, hence, it was contended that the petitioner is not entitled for any relief.

8. This Court finds, substance in the submission of the learned counsel for the Respondents. There cannot be any dispute that normally once voluntary retirement is accepted by issuing an order the same cannot be recalled except in the case of suppression of facts or commission of fraud. In my opinion, suppression of facts or commission of fraud would vitiate such order obtained from the authority, and, as such, the authority is fully empowered to recall the same and proceed against the employee in accordance with law. The petitioner has not disputed that he never brought to the notice of the authority concerned about his conviction and being in jail before the order accepting his voluntary retirement was passed. As such, in my opinion, in the present case, the petitioner obtained the order accepting his voluntary retirement by suppressing vital fact of his conviction and being in jail on account of which the said order is vitiated and the Respondent-authority has, thus, not committed any error in recalling the same and passing the order contained in Annexure-3.

9. In the result, this Court does not find any merit in the writ petition and it is, accordingly, dismissed. However, in view of the Government circular referred to in the order of this Court in the case of Ram Nandan Prasad v. State of Bihar (supra) relied upon by the learned counsel for the petitioner, this Court directs that in case of acquittal of the petitioner the Respondent-authorities shall examine his claim with respect to the remaining retiral dues afresh and issue necessary sanction order in accordance with law.