
(2015) 04 PAT CK 0031

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5538 of 1999

Jib Kant Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Citation : (2015) 2 LLN 519

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Dharendra Kumar Jha, for the Appellant; Meera Singh, A.C. to A.A.G.,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Chakradhari Sharan Singh, J.—Heard learned counsel for the petitioner and learned Assistant Counsel to Additional Advocate General No. 13 appearing on behalf of the respondents-State of Bihar.

2. The petitioner retired as Executive Engineer with effect from 30.11.1995 from Water Resources Department, Government of Bihar. He has challenged, in the present writ application, an order issued vide memo No. 2161 dated 07.08.1998, whereby, the Government of Bihar, after having found the services of the petitioner not fully satisfactory, has fixed the petitioner's pension at lower rate i.e. 75% of what he was actually entitled to, on the basis of the length of service which he had put in, in the Department. An order dated 20.5.1998 issued by the Department is also under challenge, whereby, the Department decided to recover an amount of Rs. 9,000/- from the pensionary benefits, which the petitioner was entitled to. This order is based on a disciplinary proceeding initiated against him in the year 1995.

3. From the pleadings in the writ application, it appears that several proceedings were initiated against the petitioner right from 1990 till the date of retirement. By a memo dated 13.12.1990 (Annexure-10), a disciplinary proceeding was

initiated against the petitioner. He was directed to file his show cause reply/ written statement of defence. It appears that the respondents State of Bihar by an order dated 24.8.1992, referring to the show cause reply filed by the petitioner imposed punishment of "withholding of promotion for a period of five years for the period from the year 1987-88" on the basis of this proceeding. The petitioner, it appears was placed under suspension. In the said order dated 24.8.1992 it was indicated that the decision for payment of salary for the period during which he was under suspension would be taken separately. Yet another departmental proceeding was initiated against him with issuance of charge-sheet on 08.04.1992 (Annexure-12). The petitioner submitted his reply. The State Respondents thereafter, passed an order dated 11.5.1993 (Annexure-5) imposing upon the petitioner punishment of "Censure" to be entered in the petitioner's ACR for the year 1988-89. It was also ordered by the said order dated 11.5.1993 that the petitioner will not be entitled to any salary or allowance over and above subsistence allowance for the period during which he was under suspension. Again on 25.4.1996 another show cause notice was issued to the petitioner seeking his explanation with respect to two charges. The petitioner submitted his reply. The Respondents State of Bihar by an order dated 25.4.1996, this time, imposed upon the petitioner punishment of "censure" to be entered in his ACR for the year 1990-91. Further, promotion for three years, from the date he was entitled to such promotion, was ordered to be withheld and a sum of Rs. 10,000/- was directed to be recovered. I must indicate here itself that the petitioner had already attained the age of superannuation on 30.11.1995 and there is no dispute about the fact that he was allowed to retire with effect from the date he attained the age of superannuation and the order dated 25.4.1996 imposing punishment upon the petitioner as indicate above, was apparently passed after his superannuation.

4. Nearly one month before the petitioner was going to superannuate, another charge sheet was issued against him on 21.10.1995 (Annexure-16). The petitioner submitted his reply. This time the Government again imposed punishment of entering "censure" in the ACR for the year 1987-88. By the said order dated 13.9.1996, the Government appears to have taken a decision to fix the petitioner's pension at lower rate, treating his services to be unsatisfactory. The orders as referred to above, are also under challenge in the present writ application.

5. Learned counsel for the petitioner has challenged the order dated 07.08.1998, whereby, his pension has been fixed at the rate of 75% of what he was actually entitled to, on the ground that it is violative of principles of natural justice inasmuch as, there is no discussion on the petitioner's explanation/ representation, which was sought by the Department before passing the impugned order. He has submitted that merely on the basis of certain orders of punishment imposed upon the petitioner as noted above, the State Government took the decision to reduce petitioner's pension to 75%. He has further submitted that even issuance of show cause notice to the petitioner before

passing the impugned order dated 07.08.1998 was a mere formality and what was given to the petitioner as opportunity of hearing, was as a matter of fact, post decisional hearing. He submits that the Government had already taken a decision to reduce the petitioner's pension which is evident in the order dated 13.9.1996 (Annexure-3).

6. Learned counsel appearing on behalf of the petitioner has submitted that all orders passed against the petitioner in different proceedings are, ex facie, illegal inasmuch as, the proceedings were initiated under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 2005, (hereinafter referred to as the Rules) and State respondents without even considering the petitioner's reply to the show cause notice, imposed various punishments on him. He has referred to such orders and has contended that there has been complete lack of application of mind by the Department while imposing punishment upon the petitioner. Referring specifically to the two orders dated 25.4.1996 (Annexure-4) and 13.9.1996(Annexure-3), learned counsel for the petitioner has submitted that it was beyond jurisdiction of the respondents to have passed such orders imposing punishment on the petitioner after the petitioner had already retired on 30.11.1995. He has contended that various orders imposing punishment upon the petitioner are the basis for passing the order dated 07.08.1998 reducing petitioner's pension to 75% in exercise of power under Rule 139(A)(ka) and (kha) of the Bihar Pension Rules, which are cryptic, non speaking and without showing application of mind.

7. He has also submitted that right to full pension of the petitioner is his legal right and the amount of pension could not have been reduced without following the principles of natural justice. He has relied upon two decisions of this Court reported in Shri Ram Anugrah Narain Vs. The State of Bihar and Another, (1998) 3 PLJR 95 and Serajuddin Ahmad Vs. The State of Bihar and Others, (1998) 3 PLJR 28 . Referring to the impugned order dated 07.08.1998, learned counsel appearing on behalf of the petitioner has submitted, while placing reliance upon the decisions of this Court as noted above, that the said order does not reflect any application of mind.

8. Learned counsel appearing on behalf of the State of Bihar has opposed the relief sought for and has submitted that the petitioner was found by the Department, indulging in misconduct at the fag end of his service and after due application of mind, the State Government imposed upon the petitioner various punishments and considering the fact that the petitioner was punished on several occasions, the Government found conclusively that his service was not satisfactory and, therefore, rightly exercised the power under Section 139(ka) and (kha) of the Bihar Pension Rules to reduce pension to 75%. He has submitted that the decision of the State Government, in the background of the admitted facts, needs no interference.

9. Upon perusal of various orders which have been brought on record by way of Annexures-3,4,5 and 6 to the writ application imposing punishment upon the

petitioner, I find substance in the submission made on behalf of the petitioner that the said orders do not at all disclose any application of mind. There is a vague recital in such orders that after having scrutinized the show cause replies filed by the petitioner, they found the charges against the petitioner to have been proved. There is absolutely no discussion in any of the orders as to what was the reply filed by the petitioner against the charges and why such reply and defence taken by the petitioner were not acceptable to the State Government. I also find that proceedings were sought to be initiated under Rule 55 of the Rules. However, apparently no full-fledged departmental enquiry was held as envisaged under Rule 55 of the said Rules. It appears that though the departmental proceeding was initiated under Rule 55 of the Rules but the respondents adopted the procedure prescribed under Rule 55(A) of the Rules. I find from the orders that they do not satisfy even the basic requirement of Rule 55(A) of the Rules which specifically prescribes consideration of the reply/representation presented by a Government servant against the charge. I find that there is absolutely no consideration of the representation of the petitioner in any of the orders. The submission made on behalf of the petitioner that such orders which were passed after petitioner's retirement on 30.11.1995 imposing such punishments which are not prescribed under the Pension Rules are beyond jurisdiction, illegal is acceptable.

10. In my opinion, no punishments as mentioned in the order dated 25.4.1996 (Annexure-4) and 13.9.1996 (Annexure-3) could have been imposed after the petitioner had attained the age of superannuation and was allowed to retire thereafter. I accordingly, hold that these orders are beyond jurisdiction, illegal and therefore, unsustainable. The orders dated 25.4.1996 (Annexure-4) and 13.9.1996(Annexure-3) stand quashed.

11. Though I am satisfied that the orders dated 24.8.1992 (Annexure-6) and 11.5.1993 (Annexure-5) do not show application of mind so as to satisfy the requirement of Rules 55 and 55(A) of the Rules, I refuse to interfere with the said orders as the petitioner did not assail the said orders immediately after those orders were passed.

12. From reading of the impugned order dated 07.08.1998 by which the petitioner's pension has been fixed at a lower rate of 75% in exercise of power under Rule 139 (ka) and (kha), it appears that show cause notice was issued to the petitioner before passing of the said order. It also appears that petitioner had submitted his show cause reply before the Department. However, the order does not discuss at all as to why the petitioner's reply was not acceptable to the Department. As a matter of fact, the order dated 07.08.1998 does not disclose any application of mind on the petitioner's show cause reply.

13. Learned counsel for the petitioner is right in his submission, while placing reliance upon the decisions of this Court in case of *Shri Ram Anugrah Narain Vs. The State of Bihar and Another*, (1998) 3 PLJR 95 and in case of *Serizudin Ahmad v. State of Bihar and ors* reported in 1998(3))LJR 28 (supra) that the

respondents were obliged to follow the principles of natural justice which, certainly includes application of mind by the competent authority exercising quasi-judicial/administrative powers. It has been repeatedly held by the Supreme court and this Court also that such consideration must be reflected in the order itself and, therefore, I am of the view that the order dated 07.08.1998 cannot be sustained and it is accordingly, set aside.

14. It will be open to the respondents State of Bihar to pass an order afresh after considering the petitioner's representation against proposed reduction of his pension. If the respondents intend to pass an order afresh, such order must be passed within a period of three months from the date of receipt/production of a copy of this order. If no such order is passed within the aforesaid period of three months, the petitioner shall be entitled for full pension right from the date of his retirement within a period of three months thereafter. The orders dated 25.4.1996 (Annexure-4) and 13.9.1996(Annexure-3) have been held to be wholly without jurisdiction and have been quashed accordingly. The consequences of quashing of the orders shall follow.

15. This application is allowed with the direction as above.

16. However, there shall be no order as to costs.