
(2003) 08 PAT CK 0117
In the Patna High Court
Case No : C.W.J.C. No. 6083 of 2002

Kamta Prasad Pandey

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Bihar Civil Services (Classification, Control and Appeal) Rules, 1994 — Rule 49A(2), 49A(5)

Citation : (2003) 4 PLJR 323

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : B.K. Kanth, Awadhesh Kumar Mishra, in C.W.J.C. No. 6083 of 2002, Rajendra Pd. Singh and Rajeev Kumar Singh, in C.W.J.C. No. 6462 of 2002, for the Appellant; S. Alamdar Hussain and Navendu Kumar for State, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard counsel for the parties.

2. Both these writ applications have been filed for common cause, therefore, they have been heard together and are being disposed of by this common order.

3. Both these writ applications are directed against the order, as contained in Annexure 1, issued vide memo No. 95 dated 6.1.2002, whereby and whereunder the Petitioners have been placed under suspension with effect from 31.10.2000 on account of their detention by the Ranchi Police in Lalpur Police Station Case No. 122 of 2000.

4. Learned Counsel appearing on behalf of the Petitioners have assailed the order impugned on the ground that they are under prolonged suspension without initiation of a departmental proceeding and even subsistence allowances are not being paid to them. It is also submitted by learned Counsel appearing on behalf of the Petitioners that the Petitioners were put under suspension vide order, as

contained in Annexure 1, issued by the Transport Commissioner, Government of Bihar, Patna and thereafter they have been repatriated to their parent Department, namely, Home (Police) but for no fault of the Petitioners, the departmental proceeding has not yet been initiated nor they are getting their subsistence allowances, and, therefore, the order impugned is riot sustainable in law. It is further submitted that the parent Department of the Petitioners is not initiating the departmental proceeding, as the Petitioners were put under suspension by the order of the Transport Commissioner, Government of Bihar, and a request has been made to the Transport Department to initiate the departmental proceeding at their own level. It is further submitted that some of the similarly situated Enforcement Officers, who were also put under suspension, are being proceeded against departmental by the Transport Department itself, and, therefore, the Petitioners cases should also be dealt with in the like manner, but, somehow or the other, they are being discriminated and they are hanging in between the Home (Police) Department and the Transport Department, and they are continuing under prolonged suspension without initiation of a departmental proceeding.

5. The stand of the State, according to its counter affidavit, is that the Petitioners will be paid their subsistence allowance by the parent Department since they were holding substantive posts in the Home (Police) Department, Government of Bihar and were working on deputation in the Transport Department and the parent Department would be the only competent authority to conclude the disciplinary proceeding initiated against the Petitioners and since the Petitioners are not joining in the parent Department, they are not getting their subsistence allowances nor they are cooperating in disposal of the departmental proceeding.

6. From the writ petition, it appears that the Petitioners earlier had moved this Court for the same cause of action in C.W.J.C. No. 2941 of 2001 and the same was dismissed on contest by this Court vide order, as contained in Annexure 2 to C.W.J.C. No. 6083 of 2002 holding:

In the light of the discussions made above, come to the conclusion that the three Petitioners would be deemed to have been placed under suspension by virtue of Sub-rule 2 and would remain in that state till such time as their suspension is revoked or modified by the competent authority as provided under Sub-rule 5 of Rule 49-A of the Bihar Civil Services (Classification, Control and Appeal) Rules and the impugned order passed by the Transport Commissioner simply reverts them back to their parents department to which of course no exception can be taken.

7. The order passed in the writ application was challenged by the Petitioners in L.P.A. No. 300 of 2001, which was also dismissed. However, it was observed that it would be open to the authority to modify or revoke the order of suspension in exercise of their power under Rule 49A(5)(a) of the Bihar Civil Services (Classification, Control and Appeal) Rules. The orders passed in L.P.A. No. 300 of 2001 was also challenged by the writ Petitioners in the Supreme Court in SLP

(Civil) No. 16628 of 2001, which, too, was dismissed. It further appears that the Petitioners, Praveen Kumar and others, had also approached this Court in C.W.J.C. No. 3984 of 2002 as they were not getting their subsistence allowance. C.W.J.C. No. 3984 of 2002, however, was dismissed as withdrawn on 21.3.2003, and thereafter they have again approached this Court for the same self grievances.

8. From the orders passed by this Court in C.W.J.C. No. 2941 of 2001 and L.P.A. No. 300 of 2001, it appears that the Petitioners had raised all the questions, which are being raised in these applications. It further appears that in C.W.J.C. No. 2941 of 2001, the order of suspension was mainly challenged on the ground that since the Petitioners were on deputation any disciplinary measure against them could have been taken by the competent authority in their parent Department i.e. Home (Police) Department, Government of Bihar. In these cases now a different stand is being taken by learned Counsel appearing on behalf of the Petitioners that since the Petitioners were put under suspension by the Transport Department, the departmental proceeding should be concluded from their end. This Court while dismissing the writ application had observed as follows:

In these facts and circumstances it would appear that the Petitioners are perhaps not the most suitable and desirable persons who may invoke in their favour the extra-ordinary prerogative writ jurisdiction of this Court.

It was further observed by this Court:

To me it is clear that the legal effect of the order, dated 6.1.2001 passed by the Transport Commissioner is only in so far as it reverts the Petitioners back to their parent department and in so far as the Petitioners are declared to be under suspension, that is not by virtue of that order but by operation of law.

9. The grievances of the Petitioners, as it appears from the orders passed by this Court, were examined and considered and no relief was granted to them and even SLP (Civil) No. 16628 of 2001 filed by them in the Supreme Court against the order passed by this Court in L.P.A. No. 300 of 2001 was dismissed.

10. For the reasons aforementioned, these writ applications, therefore, are held to be not maintainable as barred by res Judicata.

11. In the result, these writ applications are dismissed.

12. No order as to costs.