

(2012) 01 PAT CK 0041
In the Patna High Court
Case No : CWJC No. 9227 of 1998

Lallu Prasad Hemant

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) 3 PLJR 139

Hon'ble Judges : Shivaji Pandey, J

Bench : Single Bench

Advocate : Ajay Kumar Thakur and Imteyaz Ahmad, for the Appellant; Shambhu Nath For the State and Mr. P.L. Jaiswal For the Accountant General, for the Respondent

Judgement

Shivaji Pandey, J.—Heard learned counsel for the petitioner and the State as well as for the Accountant General, Bihar. The grievance of the petitioner is that though he has been reinstated in service, but his service has not been regularized for the period 2nd February, 1991 to 18th September, 1994 and has also made a prayer for consequential benefits for the aforesaid period, including the pay and other benefits.

2. The facts of the case is that in pursuance of recommendation made by Bihar Public Service Commission, petitioner was appointed on 17th December, 1975 on the post of District Jail Superintendent, a post of Bihar Jail Services, Junior Branch. Subsequently, in June 1981, petitioner was promoted to the next higher post of Central Jail Superintendent, a post of Bihar Jail Services (Senior Branch). Thereafter he was also promoted to the Junior Selection Grade scale in the year 1986 and then the Committee also found him fit for promotion to the Senior Selection Grade but the said notification would not be issued because by that time, order of dismissal was passed.

3. It is stated that the petitioner was transferred and posted as Central Jail Superintendent at Central Jail, Ranchi on 13th September, 1988 but just after one year, vide order dated 27th January, 1990 the petitioner was transferred at

Central Jail, Hazaribagh. This transfer was on account of mala fide and political approach made by another Central Jail Superintendent namely, N.K. Choudhary.

4. The said order of transfer was challenged by the petitioner before the then Ranchi Bench of this Court vide C.W.J.C. No. 174 of 1990(R) and vide order dated 6th July, 1990, the order of transfer was quashed. Again on 31st December, 1990, an order was issued transferring the petitioner to special Central Jail, Bhagalpur. The said order of transfer was also challenged by the petitioner before the Ranchi Bench of this Court vide C.W.J.C. No. 139 of 1991(R) and the Ranchi Bench of this Court again stayed the operation of the order and petitioner continued to function at Central Jail, Ranchi.

5. When the authorities did not succeed in their nefarious design, they in order to teach a lesson to the petitioner, vide order dated 2nd February, 1991 placed the petitioner under suspension on certain allegations of mismanagement and irregularities. The order of suspension was challenged before the Ranchi Bench of this Court vide C.W.J.C. No. 377 of 1991(R) and vide order dated 11th November, 1991, the Court quashed the impugned order directing the Enquiry Officer to proceed with the enquiry and conclude the same by 11th January, 1992. In the said order, a positive direction was issued to furnish a copy of the enquiry report and the disciplinary authority was to pass a final order within one month from the date of receipt of enquiry report. In spite of direction, the enquiry was not concluded and the order was not complied. Ultimately, the Court disposed of the writ petition with a direction that if no final order would be passed and communicated to the petitioner by 31st May, 1992, all the proceedings including the disciplinary proceeding would be deemed to have been quashed. In the said order it was stated that if an adverse order is passed against the petitioner by 31st May, 1992, he would be at liberty to challenge the same. But the fact remains that the disciplinary proceeding could not be concluded nor any order was passed. The petitioner brought the aforesaid fact to the notice of respondents and pointed out that in the eye of law, the suspension order and the departmental proceeding would be deemed to have been quashed as per the order of the Hon'ble High Court. When no favourable order was passed, petitioner filed several representations for accepting his joining. When no order was communicated, he again filed C.W.J.C. No. 12663 of 1992 for a direction to the respondents to pass an order of posting the petitioner and for other consequential benefits. During the pendency of the said writ petition, a back-dated order of dismissal from service was issued purporting to have been signed on 29th May, 1992. Accordingly, an amendment application was filed in the said writ petition and a prayer was made for setting aside the order of dismissal.

6. The case was heard by a Division Bench and this Court vide judgment and order dated 9th September, 1994 quashed the order of dismissal on the ground that the order of dismissal is illegal and invalid as the Enquiry Officer did not conduct a proper proceeding and in absence of any evidence produced before

him it was not open for him to record the finding of guilt. The Court further held that neither any witness was examined nor any document was exhibited before the Enquiry Officer in course of the proceeding. Accordingly, the order of dismissal was set aside by this Court. The order became final as no appeal was filed before the Hon''ble Apex Court. In pursuance of order of this Court, joining of the petitioner was accepted on 19th September, 1994 and, accordingly vide notification in Memo No. 824 dated 4th April, 1995 petitioner joined as Superintendent of Central Jail, Muzaffarpur and his pay slip was issued by the A.G., Bihar giving him the basic pay which the petitioner was drawing in the year 1991. Petitioner filed several representations for proper fixation of his pay as the pay which the petitioner was drawing in the year 1991 would not remain the same the pay includes annual increment.

7. Learned counsel for the petitioner submits that as the order of dismissal was set aside, petitioner was entitled to all consequential benefits including regularization of his service for the period 1991 to 1994 and also pay for the period, he remained under dismissal by the action of the Department. Petitioner further submitted that he is entitled to annual increments, including promotion as the order of dismissal was quashed on the ground that the material evidence ought to have been brought but the same was not placed before the Enquiry Officer and, as such, he cannot be deprived of the benefits, as claimed. It is further submitted that the petitioner has already superannuated from service on 31st January, 2002. Learned counsel for the State has relied on Para-5 of the counter affidavit which is as under:-

Para-5: "Since, the order of termination of Mr. Hemant has already been quashed by the Hon''ble High Court, Mr. Hemant will be deemed to be in continuous service and he is entitled for all wages from the date of his termination i.e. from 29th May, 1992. So far the difference of wage during the period when Mr. Hemant was under suspension is concerned, he will be entitled for the same only when the Government decides not to initiate a fresh proceeding against him or if a fresh proceeding is initiated, then only after exoneration from the charges of that proceeding.

8. He has further stated that the charges leveled against the petitioner relates to financial irregularity and embezzlement of money. So it will be always dependent on the outcome of the proceeding. Learned counsel for the State has failed to bring on record as to whether any further proceeding was initiated against the petitioner thereafter or not or the petitioner superannuated from service without facing any enquiry proceeding.

9. This Court does not know status of the fact in this view of the fact, the matter is being remanded to the authority concerned to examine the fact as to whether after the order of this Court, whether further any departmental proceeding was initiated against the petitioner or not or any order of punishment has been passed in pursuance thereof or not. If no such action has been taken by the respondents, in such circumstance, the authority would consider, the period the

petitioner remained unpaid and also consider the regularization of his service for the period 2nd February, 1991 to 18th September, 1994. The authority must complete the exercise of consideration with regard to his pay and also regularization of his service within a period of three months from the date of receipt or production of copy of this order. The writ petition is disposed of with the aforesaid observations and directions.