
(2008) 08 PAT CK 0165
In the Patna High Court
Case No : CWJC No. 707 of 2006

Mangeshwar Mandal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Citation : (2008) 4 PLJR 602

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Rajendra Kumar Jain and Achuta Nand Sinha, for the Appellant; Uma Kant Singh for the B.S.S.I.C., for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Vide order dated 1.10.2001 petitioner has been dismissed from service based on enquiry held against him. This order now is under challenge in the present writ application which came to be filed only in the year 2006. Based on a criminal case lodged against the petitioner he was arrested and sent to judicial custody. The arrest of the petitioner therefore forced the hands of the respondents to put him under suspension under Rule 99 of the Bihar Service Code. He was subsequently granted regular bail on 16.7.1999 and the petitioner in his wisdom thereafter gave his joining at the Headquarter of the Corporation on 25.7.1999. After giving his joining petitioner is alleged to absent from work without any leave or permission. The authorities therefore in their wisdom decided to frame a charge on 2.8.2001 against the petitioner of the charge of unauthorized absence. The petitioner was asked to show cause which he failed to do. Notices are alleged to have been sent on his permanent address thereafter extending the time but he did not avail of the opportunity. The respondents therefore held the enquiry ex parte and order of dismissal came to be passed against him. This order therefore is under challenge in the present writ application.

2. Contention of the Learned Counsel for the petitioner is that the primary reason

why petitioner could not participate in the departmental enquiry was because he was prevented by penury and non-payment of his salary if not subsistence allowance during the period of suspension. The petitioner was a low paid employee and was working as orderly under the respondent-Corporation and the said situation compelled him to go home to sustain himself. The authorities taking advantage of their own wrong thereafter have proceeded in the matter ex parte and passed the order of dismissal. The petitioner has also stated in a rejoinder application that even salary was not being paid to the employees of the Corporation in question for a long time and it only at the intervention of the Hon"ble Supreme Court in the case of Ed.-2003 (3) PLJR (SC) 17 Kapila Hingorani that some assistance came to be made available to him through Justice Uday Sinha Committee. This is the reason why the order impugned could not be challenged earlier.

3. Respondents have filed their counter affidavit and they have stated that they had no option in the matter except to proceed ex parte against the petitioner. Their concerted effort in giving opportunity to the petitioner did not succeed and the petitioner himself is to blame for the present situation. They justify their action based on the enquiry which came to be held against him.

4. There are two glaring factors in the present writ application which this Court cannot ignore in adjudication of the present matter. In the counter affidavit there is no statement with regard to payment of subsistence allowance to the petitioner for the period he was under suspension. It is the duty of the employer to ensure that a suspended employee gets his subsistence allowance and thereafter if an employee does not co-operate in the departmental proceeding the respondents could have an occasion to say few things on the issue. The other aspect which the Court would like to also record is that many a Government Corporations have not been paying salary to their employees for years together. It was in this circumstance that treating an application filed on behalf of an advocate of the Hon"ble Supreme Court, the Hon"ble Supreme Court decided to pass certain orders in Kapila Hingorani case Ed.-2003 (3) PLJR (SC) 17: 2005 (1) PLJR (SC) 263. The contention of the petitioner on the economic front can well be imagined by this Court. The Court would also like to record that petitioner's service has been terminated on charge that he was absent without authority after giving his joining at the Headquarters. From a perusal of the charge-sheet this absence does not seem to be prolonged absence as such and even if for the sake of argument it is treated to be a case of unauthorized absence, if a proper departmental enquiry would have been held giving a chance to the petitioner, he may have been in a positron to explain to the authorities the circumstances at the relevant time. Employees are entitled to leave of several kinds. If only the petitioner had exhausted one and all kind of leave that a harsh punishment could be imposed. Some of the reasons for the absence of the petitioner is now reflected in the pleadings which is available before the court.

5. In the totality of the facts and circumstances, this Court is of the opinion that

the order of termination dated 1.10.2001 contained in Annexure-2 cannot be sustained since it is in teeth of a pronouncement of a Constitution Bench of Hon"ble the Supreme Court as far back as in the year 1973 which is the case of Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh, .

6. Respondent authorities are hereby directed therefore to take the joining of the petitioner and if they still feel that they need to proceed on the earlier charge brought against him in the year 2001, they shall hold a fresh enquiry by giving adequate opportunity to the petitioner or else adjust his absence under the category of leave available to him. The impugned order dated 1.10.2001 contained in Annexure-2 is quashed. The writ application stands allowed.