
(2012) 03 PAT CK 0029
In the Patna High Court
Case No : CWJC No. 13226 of 2008

Manju Kumari Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Citation : (2013) 1 PLJR 165

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Suman Kumar Mishra, Dr. Ram Kishore Pathak and Satyendra Rai,
for the Appellant;

Judgement

Mihir Kr. Jha, J.—Heard counsel for the parties. Initially when this writ application was filed on 2.9.2008 the petitioner's prayer was plain and simple that her joining on the post of Assistant Teacher on which she was appointed in the year 1982 by an order dated 20.3.1982 and on which she had continued at least till 2.11.1998 without any break should be accepted. As a matter of fact in the writ application it was explained that on or after 2.11.1998 the petitioner's condition of health had deteriorated and she became a mental case, whereafter she was required to undergo specialized treatment and when no improvement could be made at Bhagalpur she was admitted in Central Institute of Psychiatry at Ranchi where she made some improvement only after June, 2001. It is the case of the petitioner in the writ application that she had submitted her joining report on 25.6.2001 but the same was not accepted by the authorities.

2. A writ application filed after seven years of the cause of action by the petitioner for acceptance of joining would definitely give rise to a strong suspicion that the condition of the petitioner had never improved or that the petitioner was not really willing to work even after her so called recovery in the year 2001. The plea of the petitioner that she had kept on filing representation after 25.6.2001 would also be of no avail taking into account that this writ application was filed for acceptance of her joining only on 2.9.2008.

3. The respondents, however, in the counter affidavit have explained that the petitioner became unauthorizedly absent from duty since 2.11.1998 and thereafter the first information about her could be gathered only through the writ application when a copy thereof was served on the office of the respondents. It has also been explained that thereafter the petitioner was given several show cause notice, as contained in Annexures "B", "C" and "D" series" and in fact even a newspaper notice published in the month of October, 2009 did not evoke any response from the petitioner. The respondents have accordingly explained that when the petitioner had adopted the defiant attitude and did not even participate in the departmental proceeding initiated against her, the appointment of the petitioner was cancelled both on the ground of her remaining absent from duty as also she being not equipped with proper education and training qualification necessary for appointment on the post of teacher.

4. The order, contained in Annexure "D" dated 12.12.2009, terminating the service of the petitioner has thereafter been assailed by the petitioner by filing an interlocutory application, I.A. No. 589/2012, wherein all that has been said by the petitioner is that none of the notices as claimed in Annexures-B, C and D were ever served on the petitioner. Counsel for the petitioner has also submitted that the newspaper in which the notice is said to have been published is not a leading newspaper and therefore, the petitioner virtually had been given no opportunity to participate in the enquiry.

5. Learned counsel for the petitioner submits that now the petitioner has already attained the age of superannuation in view of her date of birth with effect from 1.2.2011 and therefore, this Court should quash the order of termination of the petitioner as it is in flagrant violation of the provisions made in Bihar Service Code as also in teeth of the principles of natural justice. He has further submitted that since the petitioner had submitted joining report on 25.6.2001 she should be also entitled for payment of salary for the period 25.6.2001 to 31.1.2011.

6. Learned counsel for the State, on the other hand, would submit that when the appointment of the petitioner was itself doubtful and the petitioner became absent from duty from the year 1998 without any information, she would not be entitled for any equitable relief especially when she did not choose to appear before the Authority with any explanation for her remaining absent from duty as also producing her relevant certificate of qualification and undergone training.

7. In the considered opinion of this Court there are three facets of the petitioner's case. Firstly, the acceptance of joining of the petitioner on 25.6.2001 and her continuation in service at least till the date of termination of her service i.e. 12.12.2009 when her services were terminated. The petitioner in this regard has relied on the representation which is said to have been filed by her for acceptance of her joining but the respondents have categorically denied to have ever received such representation and in fact their knowledge of the petitioner's resurfacing after becoming unauthorizedly absent on 2.11.1998 is through this writ application. In that view of the matter, when such a categorical stand taken

by the respondents in the counter affidavit has not been controverted by the petitioner, there would be no escape from the fact that the petitioner's plea of joining the post of teacher on 25.6.2001 after the alleged recovery from her illness cannot be proven by her much less accepted by this Court.

8. The second aspect which would be equally important for deciding the case of the petitioner is that she had been appointed in Government service as a teacher on 20.3.1982 and admittedly she had continued in service till 2.11.1998. The petitioner thus was a permanent employee and should not have been removed from service without initiating a departmental proceeding. The show cause notices even if taken to their logical conclusion would only go to show that the petitioner was asked to appear before the Authority and was expected to furnish her explanation for remaining unauthorizedly absent from duty as also produce the certificate of her qualification and training. The person being unauthorizedly absent from duty cannot be removed only by way of giving a show cause notice and to that extent the concept of automatic termination of service in terms of earlier Rule 76 of the Bihar Service Code was held to be ultra vires by this Court in the case of Sobhana Das Gupta Vs. The State of Bihar and Another, . Thereafter, the State Government had amended Rule 76 of the Bihar Service Code wherein it was provided that even a person who was unauthorizedly absent from duty can be terminated only after initiating departmental proceeding. A procedure of undergoing the departmental proceeding for a major punishment is also well defined wherein charges have to be framed and communicated giving opportunity to the delinquent to file a written statement of defence, whereafter the department has to lead evidence oral and/or documentary to prove such charges. It is only upon conclusion of leading of evidence by the Department that the delinquent has to enter into his or her defence and produce evidence in defence.

9. From the reading of the show cause notices and the impugned order it is absolutely clear that no departmental proceeding was ever initiated against the petitioner and the authorities had terminated the services of the petitioner merely by issuance of a show cause notice. Such order of termination of service, therefore, is in teeth of Rule 76 of the Bihar Service Code as also against the statutory provision of Disciplinary Control and Appeal Rules governing service conditions of the Assistant Teachers of Primary School. The necessity of holding a full-fledged departmental proceeding even otherwise could not have been avoided. It has to be kept in mind that since Annexure "D" was a compact order wherein the petitioner's services were terminated not only on the ground of unauthorized absence but also creating the doubt about her educational qualification and training qualification at the time of her appointment in the year 1982. This Court, therefore, will have no difficulty in holding that the order of punishment passed against the petitioner is wholly unsustainable either on fact or in law and Annexure "D" to the counter affidavit is therefore fit to be quashed.

10. The third and the last aspect would be that now the petitioner has already

retired from service and even when her grievance of acceptance of joining was belated, she cannot now stand deprived of payment of her retirement benefit unless the authorities decide to initiate a fresh departmental proceeding. This Court will have, however, not given such liberty at this stage because the petitioner was allowed to work from 1982 to 1998 without any break and without questioning her initial appointment on any ground whatsoever. In fact till the petitioner had filed this writ application no one had questioned her appointment and therefore, this Court would not permit the authorities to now reopen the issue of her initial appointment of the year 1982. The authorities must treat the petitioner to have worked in service from 20.3.1982 to 2.11.1998 and treat the same as a qualifying service, and thus eligible and good enough for grant of pension, inasmuch as under Bihar Pension Rules ten years continuous service by itself would qualify a retired Government servant to get pension and retirement benefit. The petitioner, however, will not be entitled for any monetary relief from 2.11.1998 onwards towards payment of her salary and emolument as admittedly she had never worked after that date. The respondents, therefore, will be required to pay her retirement benefit i.e. pension, gratuity and other emoluments by taking the qualifying service on 20.3.1982 to 2.11.1998 on the last pay drawn by her before becoming unauthorisedly absent. Such an order would meet the ends of justice for an ailing lady like the petitioner who had admittedly continued in service for 15 to 16 years before becoming ill and absent from duty. This exercise must be completed by the competent authority within a period of four months from the date of receipt/production of a copy of this order and whatever amount on the head of retirement benefit is found payable to the petitioner must be paid in next two months. With the aforementioned observation and direction, this application is disposed of.