
(2007) 08 PAT CK 0042
In the Patna High Court
Case No : CWJC No. 937 of 2002

Md. Qamrul Hoda

APPELLANT

Vs

Bihar State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Citation : (2007) 4 PLJR 549

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : R.N. Mukhopadhyaya, Md. Abu Haider, Maqbool Ahmad and Johan Ara, for the Appellant; P.K. Verma, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned counsel for petitioner and learned counsel for the respondent Corporation. Petitioner is a retired clerk who was under employment of Bihar Road Transport Corporation. At the relevant time it is stated that he was the custodian of the service records of one Parmeshwar Prasad, an ex-artisan working under Patna Division. Petitioner was posted under Patna Division and thereafter it is stated that he discovered certain interpolation in the service record of said Parmeshwar Prasad. According to petitioner he forwarded this information to the Divisional Manager and brought it to his notice on 1.11.1980. On 10.11.81 the relevant record was called for by the Divisional Manager, but nothing. as such, thereafter seems to have been happened for a couple of years. A show cause was however issued to Parmeshwar Prasad for certification of his correct date of birth. No final decision was however taken at any level. In 1987 petitioner was transferred to Bhagalpur Division and he handed over charge to one Vishnukant Jha. It seems that based on the interpolation in the service records the said Parmeshwar Prasad instead of retiring in March, 1987 continued to work under the respondent till the year, 1992. The respondent finally woke up to the situation and decided to fix responsibility.

2. A charge-sheet was drawn up against the petitioner where the main allegation was that he despite being the custodian of the file in question did not show promptness in getting the issue decided about the correct date of birth of the employee in question. An enquiry was held against him and enquiry officer held him guilty based on which punishment of censor, stoppage of two increments but with out cumulative effect and recover money which was paid as salary to said Parmeshwar Prasad was also ordered. Initially this amount was divided between the petitioner and the said Vishnukant Jha. But it seems that in an appeal filed by said Vishnukant Jha he was exonerated and even the share of money which was to be recovered from the said Vishnukant Jha was shifted on the head of petitioner. In the present writ application the petitioner has not only challenged the order of punishment but also order passed in appeal which is contained in annexure-1. The appellate authority has confirmed the order of punishment passed by the disciplinary authority.

3. Learned counsel for petitioner categorically asserts that there was no wrong doing on his part. In fact, he brought the interpolation in the service book of said Mr. Prasad to the notice of the superior at the earliest after his joining and it was within the domain of the respondents to take a final decision as to what should be done with regard to the said interpolation. He further asserts that despite he being not provided fullest opportunity to participate in the enquiry which was held at Patna when he was posted at Bhagalpur, the enquiry officer has not been able to find evidence to saddle him with the liability. Reading the enquiry report would show that it was at best a case of suspicion but not a case of evidence in this regard. According to petitioner suspicion can never take the place of evidence.

4. Based on earlier order passed by the High Court, petitioner filed an appeal. This appellate order is annexure-1 to the writ application. Petitioner has taken me through the order and has demonstrated that despite the lengthy discussion on the issue even the appellate authority had found the case of suspicion though they have held the suspicion to be enough to find the petitioner guilty of the charges.

5. Learned counsel appearing on behalf of the respondent asserts that there is no infirmity, legal or otherwise in the order passed. According to him the petitioner has failed to shoulder his responsibility which led to an employee to continue in service for more than five years. This has caused substantial financial loss to the Corporation and the petitioner had to answer for his lapses.

6. The question which arises for consideration is whether there is sufficiency of evidence as such to hold the petitioner guilty. On a repeated question being put to learned counsel for the respondents he has not been able to demonstrate as to whether it was within the domain of petitioner to resolve the controversy which was raised due to interpolation in the service book. Petitioner being a petty clerk, no doubt being the custodian of file in question can only make efforts to bring to notice of superior authority but cannot take any decision on the issue.

The matter had been brought to the notice of superior but surprisingly enough the superior had not played any positive role in getting the matter resolved.

7. It may be a case that the petitioner was incompetent and not efficient enough but can it be treated as a case of the kind where he needs to be saddled with certain punishment which has civil consequences. Can it be treated as a case of indiscipline warranting disciplinary action?

8. This Court also finds it strange that in an appeal filed by one Vishnukant Jha who was also the custodian of the service records from 1987 to 1992, the period when Sri Parmeshwar Prasad was allowed to continue illegally has been exonerated. Not only this the recovery amount fixed on his head has also been shifted on the head of petitioner. It is a strange yardstick of justice which the respondents have adopted.

9. This Court gets an impression that due to inordinate delay on the part of the superiors in getting the matter resolved, petitioner was made the sacrificial goat. Since the respondents were already in deep financial mess they were spurred to take a decision to make recovery of money from a clerk/Class III employee. This was supposed to be the salary paid to Parmeshwar Prasad for the period 1987 to 1992.

10. Evidence in this case does not compel this Court to accept the contention of the respondents that petitioner was guilty of not having taken steps promptly to rectify the interpolation in the service book of the employee. As already taken note of above, the punishment against the petitioner has been based only on suspicion. But suspicion has never been allowed to be good enough to take place of proof.

11. In above view of the matter, this Court is constrained not only to quash annexure-1 which is the appellate order dated 1.9.2000 but also the order of punishment contained in annexure-3 dated 31.12.93. The Court also directs the respondents not to recover the amount which was supposed to be payable by said Vishnukant Jha from the head of petitioner. Petitioner will now be entitled for all the consequential benefit in view of the fact that punishment order imposed upon him has been quashed. This writ application stands allowed to the extent of relief granted above.