

(2020) 09 JH CK 0001

In the Jharkhand High Court

Case No : Writ Petition(S) No. 4669 of 2015, 136 of 2016

Mukut Dhari Mahato

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 149, 302, 304B, 307, 341

Bihar Pension Rules, 1950 — Rule 43, 43(b)

Bihar Government Servant's Conduct Rules, 1976 — Rule 3, 3(A)(5)

Citation : (2020) 09 JH CK 0001

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Manoj Tandon, Kaushik Sarkhel, Suraj Prakash

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties through V.C. Since both these writ applications are interconnected; as such, the same are being disposed of by this common order.

2. W.P. (S) No. 136 of 2016 has been preferred by the petitioner for quashing the office order as contained in memo no.4532 dated 29.10.2015, passed by the District Superintendent of Education, Dhanbad (Respondent No.4), whereby the petitioner has been dismissed from service with retrospective effect i.e. 21.10.2008, after the petitioner stood retired on 30.04.15 from the post of Assistant Teacher and also for payment of all consequential benefits after quashing the impugned order.

3. W.P.(S) No. 4669 of 2015 has been preferred by the petitioner for direction upon the respondent Authorities to pay all pensionary benefits including pension, gratuity, leave encashment, provident fund and other admissible outstanding dues on account of retirement of the petitioner on 30.04.2015 from the post of Assistant Teacher, Middle School, Ratanpur, Govindpur-02, Dhanbad and also to pay the salary after deducting the subsistence allowance from 24.11.2008 to

30.04.2015 inasmuch as, the petitioner was put under suspension on 24.11.2008 and retired on 30.04.2015 without conclusion of the departmental proceeding.

4. Brief factual matrix relevant for disposal of the matter as disclosed in the writ applications are that the petitioner was appointed as Assistant Teacher on 20.04.1977. In the year 1995, a case was instituted against him being Govindpur (Barwadda) P.S. Case No.355 of 1992, registered under Sections 302/ 307/149 and 341 of the Indian Penal Code in which he was convicted on 14.10.2008 and was sentenced to undergo rigorous imprisonment for life on 21.10.2008. However, he was released on bail by this Court vide order dated 10.10.2014 passed in Criminal Appeal No.03 of 2009 filed by the petitioner, which is still pending before this Court. The petitioner was put under suspension on 24.11.2008 (Annexure-1) and a departmental proceeding was initiated against him by framing memo of charge on 31.03.2015 (Annexure-2) and he was directed to submit his reply to the memo of charge on 08.04.2015 (Annexure-3). Thereafter, on 11.04.2015, the petitioner responded to the letter dated 08.04.2015 and submitted his reply to the memo of charge on 21.04.2015 (Annexure-5). During pendency of the proceeding, the petitioner retired from service on 30.04.2015 while he was posted as Assistant Teacher, Middle School, Ratanpur, Govindpur-02, Dhanbad. On 27.05.2015 (Annexure-6), the petitioner submitted all the relevant papers for payment of his pensionary benefits, but however, with no effect. The specific case of the petitioner is that he has been dismissed from service retrospectively w.e.f. 21.10.2008 i.e. the date of sentence after conviction, by the impugned office order dated 29.10.2015 (Annexure-7).

5. Mr. Manoj Tandon, learned counsel for the petitioner contended that the office order dated 29.10.2015 passed by the Respondent No.4 whereby the petitioner has been dismissed from his services with retrospective effect is totally against the settled principle of law as dismissal order cannot be passed retrospectively. Learned counsel further contended that since the petitioner has been superannuated on 30.04.2015 and he was dismissed from his services on 29.10.2015 as such, the petitioner is entitled to get all the consequential/retiral benefits payable to him. He further contended that an act done by the petitioner in his private capacity and not involving discharge of his official duty could not amount to an act of moral turpitude. He further contended that retiral benefit cannot be withheld under Rule 43 of the Bihar Pension Rules, as Rule 43(b) of the Bihar Pension Rules specifically provides the right of withholding or withdrawing any pension or any part of it, if a pecuniary loss has been caused to the Government and it is incumbent upon the authorities to issue a show cause notice and to hear the convicted ex-employee before passing an order under Rule 43(b) of the Bihar Pension Rules. He further contended that the petitioner could not have been dismissed as the same is barred under Article 311(2) of the Constitution of India. Learned counsel concluded his argument by submitting that continuation of departmental proceeding and order of punishment after superannuation of the petitioner is wholly unjustified and against the provisions of law. In order to buttress his argument, learned counsel relied on the following

judgments:

(a) Chandra Singh and others v. State of Rajasthan and another reported in (2003) 6 SCC 545 (para-38);

(b) Dev Prakash Tewari v. U.P. Cooperative Institutional Service Board reported in (2014)7 SCC 260 (Para-8, 9 & 10);

(c) Bhagirathi Jena v. Board of Directors OSFC & ors. reported in (1999)3 SCC 666 (Para-6 & 7) Learned Counsel also referred to the judgment of the Hon'ble Patna High Court reported in 2007 (1) PLJR 289 [Suresh Kumar v. Union of India & Ors.] wherein the Court held that any dismissal will be bad in law during the pendency of the appeal. Relying on the aforesaid judgments, Mr. Tandon submits that the impugned order deserves to be quashed and set-aside.

6. Per Contra, Mr. Kaushik Sarkhel, GP-V, appearing on behalf of the Respondents contended that the order of dismissal dated 29.10.2015 passed by Respondent no. No.4 is not bad in law as the petitioner has been convicted for committing an offence under section 302/149 of the Indian Penal Code and sentenced to undergo life imprisonment along with a fine of Rs.1000/- on 21.10.2008. He contended that the issue involved in this case is well settled that if an employee is convicted for a serious offence involving moral turpitude then only on that ground, the employee can be dismissed from his/her service. He further submits that the moment he was convicted, he ceases to become a public servant. He further submits that the full bench of the Hon'ble Patna High Court in the case of Sarju Prasad Singh v The State of Bihar & Ors. reported in (1986) PLJR 285, the Hon'ble Court has held that the criminal charge of substantive murder under section 302 of the Indian Penal Code involves moral turpitude. It has been further submitted by the learned counsel for the State respondents that though the petitioner was convicted for the offence under section 302 of the Indian Penal Code on 21.10.2008, but the petitioner has never informed the Respondent Authorities or the school where he was Assistant Teacher regarding such conviction and this fact will be evident from Annexure-1 of the writ petition which is the suspension letter issued by the Respondent No.4 dated 24.11.2008. In the said letter it has been mentioned that on the basis of the letter written by the petitioner and the letter issued by Area Education Officer, Govindpur, it has been brought to the notice of the Respondent No.4 that the petitioner has been made an accused in connection with Barwadda P.S. Case No.413 of 1995 for which he remained in custody and as such, the petitioner has been suspended. This very letter clearly indicates the fact that the Respondent No.4 was not aware of the conviction of the petitioner dated 21.10.2008 and the authorities came to know about such conviction only in the year 2015, which will be evident from Annexure-3 of the Writ Petition.

7. It is next submitted by the Respondents that the petitioner has not annexed any letter to show that the petitioner has superannuated on 30.04.2015 rather a statement has been made in paragraph-13 of the Writ Petition that the petitioner

has retired on 30.04.2015. It is further relevant to mention here that a Departmental Proceedings was initiated against the petitioner on 31.03.2015 and Memo of Charge was also served upon the petitioner and thereafter an inquiry officer was appointed on 08.04.2015 and the petitioner filed his written statement of defence on 21.04.2015 and the order of dismissal was passed on 29.10.2015 and even in the order of dismissal it has not been mentioned that the petitioner has superannuated on 30.04.2015; as such, the contention of the petitioner that the petitioner has retired from service on 30.04.2015 cannot be accepted as there is no document that has been annexed by the petitioner to prove the same.

8. It is further contended by the Respondents that once an employee is convicted of a serious offence involving moral turpitude then it permits the disciplinary authority to initiate disciplinary proceedings against the employee and ought to take appropriate steps to his/her dismissal/removal only on the basis of such conviction.

9. In support of his contentions, learned counsel for the Respondents rely on the following judgments:-

- a. (2010) 8 SCC 573 [in the case of Sushil Kumar Singhal v Regional Manager PNB (Paragraphs-18, 21 & 24)];
- b. (1996) 4 SCC 17 [in the case of Pawan Kumar v State of Haryana & another];
- c. (1997) 4 SCC 1 [in the case of Allahabad Bank & another v Deepak Kumar Bhola];
- d. 2013 (3) PLJR 608 [in the case of Subrata Basu v State of Bihar & Ors.].

10. Having heard learned counsel for the parties and after going through the materials available on record, following issues emerge for adjudication:-

Issue no. (i) Whether continuation of departmental proceeding and order of punishment even after superannuation of the delinquent is justified?

Issue no. (ii) Whether the petitioner is entitled/covered by the protection guaranteed under Article 311(2) of the Constitution of India?

Issue no. (iii) Whether after conviction for an offence involving moral turpitude it is incumbent upon the authorities to issue any show cause notice and to hear the convicted ex-employee before passing an order under Rule 43(b) of the Bihar Pension Rules?

Issue no. (iv) Whether in the facts and circumstances of this case, the dismissal of the petitioner retrospectively w.e.f. the date of conviction by competent Court is justified ?

11. It appears that the petitioner was appointed as Assistant Teacher on 20.04.1977 and in the year 1995, a criminal case has been instituted against him for the offence committed under Sections 302/307/149 and 341 of the Indian

Penal Code and in the said criminal proceedings he was convicted and sentenced to undergo rigorous imprisonment for life. Thereafter, the petitioner was put under suspension on 24.11.2008. The fact further transpires that the petitioner was released on bail by this Court vide order dated 10.10.2014 in Criminal Appeal No.03 of 2009. A departmental proceeding was also initiated against the petitioner in which he was dismissed from service retrospectively w.e.f. 21.10.2008 by the impugned office order dated 29.10.2015 (Annexure-7).

12. Learned counsel for the petitioner contended that continuation of departmental proceedings and order of punishment after his superannuation is wholly unjustified and against the provisions of law and the question of imposing major penalty of dismissal after his superannuation would not arise. In this regard reference may be made to the Judgment of Hon'ble Apex Court in the case of Takhatray Shivadattaray Mankad V. State of Gujarat reported in 1989 Supp (2) SCC 110. In the said case the question of departmental inquiry instituted before retirement and its continuation after the age of superannuation was considered. It was held that proceedings could be continued under the relevant rules, and as provided, the order could have been passed with respect to pension and gratuity. The proceedings did not become infructuous. Recently also, the Hon'ble Apex Court in the case of Chairman-cum-Managing Director, Mahanadi Coalfields Limited -versus- Rabindranath Choubey reported in 2020 SCC online SC 470 has held that the disciplinary authority has powers to impose penalty of dismissal upon the delinquent even after his attaining the age of superannuation. Relevant portion of Para-70 & 72 are quoted herein below:-

"70. It would be against the public policy to permit an employee to go scot-free after collecting various service benefits to which he would not be entitled, and the event of superannuation cannot come to his rescue and would amount to condonation of guilt. Because of the legal fiction provided under the rules, it can be completed in the same manner as if the employee had remained in service after superannuation, and appropriate punishment can be imposed."

"72. (2) the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent even after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employee was in service."

13. The aforesaid judgment has clearly laid down the legal position that the departmental proceedings do not lapse and become infructuous and punishment, as may be considered appropriate, can be imposed in terms of relevant rules. As such the issue no.(1) is decided against the petitioner.

14. It has been argued on behalf of the petitioner that the petitioner could not have been dismissed as the same is barred under Article 311(2) of the Constitution of India. This aspect has been dealt by the Hon'ble Apex Court in the case of Deputy Director of Collegiate Education (Administration) Madras v S

Nagoor Meera reported in AIR 1995 SC 1364 wherein the Hon'ble Apex Court has laid down the law in paragraph-9 as under:-

"The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under Clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant- accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under Clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by his court in *Shankardass v. Union of India* [1985] 2 S.C.R. 358:

Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplated that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since Clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly."

15. In the present case, admittedly, the petitioner has been convicted for the offence under section 302 of the Indian Penal Code which is a serious offence as also offence involving moral turpitude as such, the petitioner cannot claim the benefits of Article 311(2) of the Constitution of India and further according to the judgment of the Hon'ble Supreme Court of India in the case of *Deputy Director of Collegiate Education (Administration) Madras v S Nagoor Meera* (Supra), until the said conviction of the petitioner is set aside by the Appellate Court or Higher Court may not be advisable to retain such person in service and if the petitioner succeeds in appeal on other proceedings the matter can always be reviewed in such a manner that the petitioner suffers no prejudice. In view of the aforesaid legal position, issue no.(ii) is also decided against the petitioner as the petitioner cannot claim benefits of Article 311(2) in view of Clause-(a) of second proviso to Article 311(2) of the Constitution of India.

16. It has also been argued by Mr. Tandon with regard to the prayer made by the petitioner that he may be granted all consequential benefits. It has been vehemently contended that retiral benefit cannot be withheld under Rule 43 of the Bihar Pension Rules as Rule 43(b) of the Bihar Pension Rules specifically provides that right of withholding or withdrawing any pension or any part of it, if a pecuniary loss has been caused to the Government is found in a departmental or a judicial proceeding to have been guilty of grave misconduct ought to have caused pecuniary loss to the Government by misconduct or by negligence during his service rendered on re-employment after retirement.

I am not in agreement with this contention of the learned counsel of the petitioner for the sole reason that Rule 43(a) of the Bihar Pension Rules clearly provides that pension can be withheld if a person has been convicted of a serious crime and in the present case, the petitioner has been convicted under section 302 of the Indian Penal code and as such, the aforesaid submission of the petitioner is totally misconceived.

17. It has been further contended by the learned counsel for the petitioner that the main question to be considered whether after such conviction it is incumbent upon the authorities to issue any show cause notice and to hear the convicted ex- employee before passing an order under Rule 43(b) of the Bihar Pension Rules.

From perusal of the provision under Rule 43(b), it does not appear that any such procedure is required to be followed; the said Rule only consist upon a proper opportunity to an employee in a full fledged departmental proceeding before arriving at a finding of misconduct upon which order of withholding pension is made. With regard to judicial proceeding, no such procedure is required as the very functioning of a criminal court is such that maximum opportunity of hearing is provided to a person and finding of guilt is recorded if the charges are proved beyond reasonable doubt. Once a finding is recorded either in a departmental or judicial proceeding, there is no further requirement in the said Rule of giving a further opportunity to the concerned employee. The same is not required even when a punishment is imposed while he is still in service after the 42nd amendment of the Constitution of India in Article 311. If no such further opportunity to represent in the Departmental Proceeding is required. so far as the quantum of punishment is concerned or even with respect to passing an order of withholding the whole or part of the pension, then no question arises that how after conviction by a court of law, such opportunity would be required. This principle of law has been reiterated by the Hon'ble Patna High Court in the case of Chintamani Sinha & Ors. v. State of Bihar & Ors. reported in 2013 (1) PLJR 439 wherein at para-15 the law has been laid down as under:-

"15. I have considered the submissions of learned counsels for the parties. It is evident from the facts of the present case that the original petitioner not only had been charged of having committed the criminal offence of murder while he was still in service and remained in jail continuously both at the time of trial and

for almost five years after his conviction after filing Criminal Appeal in the year 2004 and he was finally released on bail by order dated 20.5.2009 of this Court. The offence of committing murder as per the Full Bench decision of this Court in Sarju Prasad Singh's case (supra) involves moral turpitude and thus conviction under Section 302 IPC by itself would have been sufficient, if the said order has been passed while the petitioner was still in service, for dismissal of the petitioner from service in terms of the Service Rules as also the provisions of Article 311 of the Constitution without holding any further departmental enquiry against the petitioner."

18. Thus, issue no.(iii) is also decided against the petitioner.

19. Learned counsel for the petitioner vehemently contended that the office order dated 29.10.2015 passed by the Respondent No.4 whereby the petitioner has been dismissed from his services with retrospective effect is totally against the settled principle of law as dismissal order cannot be passed retrospectively. He further argued that an act done by the petitioner in his private capacity and not involving discharge of his official duty could not amount to an act of moral turpitude

20. It is well settled proposition of law that if an employee is convicted for a serious offence involving moral turpitude then only on that ground, he can be dismissed from his/her services. The moment a person is convicted, he ceases to become a public servant. A Government Servant in terms of Rule 3 of the Bihar Service Conduct Rules is required to maintain absolute integrity, devotion to duty and to do nothing which is unbecoming of a Government Servant. It was this aspect of the matter which was considered by the full bench of Hon'ble Patna High Court in the case of Sarju Prasad Singh v State of Bihar (Supra) wherein it has been held that a Government Servant having been convicted by a Court of competent jurisdiction for criminal charge of murder can be said to have committed an offence involving moral turpitude and as such, conduct of the Government Servant is in violation of Rule 3 of the Bihar Government Service Conduct Rules. The argument of the petitioner that an act done by a Government Servant in his private capacity and not involving discharge of his official duty could not amount to an act of moral turpitude is misconceived. This submission is in teeth of the observation made by the Hon'ble Apex Court in the case of Dayashankar v High Court of Allahabad reported in AIR 1987 SC 1469 where a Government Servant having been caught using unfair means in the examination, an act which did not relate to discharge of his official duty, was held to be conduct to totally unworthy of the office of a Government Servant. In this regard reference can also be made to the judgment passed by Hon'ble Patna High Court in the case of Subrata Basu reported in 2013(3) PLJR 608 wherein at para-23, the Hon'ble Court has held as under:-

"23. As would be noted from perusal of the aforementioned Rules, the amendment in Rule 3(A) by inserting the underlined provision was made by GSR 12 dated 8.8.1990 enabling the competent authority to place a Government

servant under suspension on the ground of his facing prosecution for offence under Section 304B of the Indian Penal Code. Such order of suspension in terms of Rule 3(A)(5) was to remain in force until it was modified or revoked by the competent authority to do so. The order of suspension of the petitioner was passed only during the pendency of his facing criminal trial for offence under Section 304B I.P.C. and, therefore, the life of such suspension order had come to an end when the judgment in the criminal case convicting him for offence under Section 304B I.P.C. and sentencing him to under rigorous imprisonment for life had been passed. In that view of the matter, the respondents were under obligation to consider the case of the petitioner and the competent authority having found the petitioner to have been convicted for offence under Section 304B I.P.C. and other allied offences had dismissed him from service by an order dated 16.11.2001 in keeping with the requirement of proviso A to Article 311(2) of the Constitution of India laying down automatic dismissal, removal or reduction in rank after conviction of a Government servant. Thus, the recourse taken to by the respondents in passing such an order on 16.11.2001 dismissing the petitioner on account of his being convicted by the competent court cannot be faulted either on fact or in law, inasmuch as, in the facts and circumstances of this case, the petitioner, a life convict for an offence under Section 304(B) IPC, could not have been allowed to continue in service."

21. Learned counsel for the petitioner vehemently argued that the dismissal order cannot be passed retrospectively. In my considered opinion, in the instant case, the order of dismissal in essence is not a case of retrospective termination. The order is only ex post facto recognition of an event that has already been taken place. The petitioner was already convicted and sentenced on 21.10.08. Recognition of event is naturally ex post facto when after release on Bail in Criminal Appeal, the petitioner represented before the respondent authorities and only then the departmental proceeding was initiated against him. Even otherwise, in the case of Chairman-cum-Managing Director, Mahanadi Coalfields Limited (Supra) the Hon'ble Apex Court has categorically held that the disciplinary authority has powers to impose the penalty of dismissal /major penalty upon the delinquent even after his attaining the age of superannuation; as such, the contention of the petitioner that the dismissal order cannot be passed retrospectively is misconceived and has no force in the eye of law. In view of the aforesaid discussions even the issue no. (iv) is decided against the petitioner.

22. In view of the aforesaid facts and circumstances and discussions made hereinabove, I do not find any error in the impugned order as contained in memo no.4532 dated 29.10.2015 passed by the District Superintendent of Education, Dhanbad (Respondent no.4), whereby the petitioner has been dismissed from service. Further, from para-10 of the counter affidavit dated 25.06.2020 filed in W.P.(S) no. 4669 of 2015, it appears that the petitioner has already received his GPF accumulation amounting to Rs.6,36,070/- and compulsory Group Insurance amount for Rs.1,62,553/- vide bill no.144/2016-17. As such, the petitioner is not

entitled for any relief, whatsoever, as prayed for in the aforesaid writ applications.

23. Consequently, both these writ applications are hereby dismissed on contest.