

(2012) 02 PAT CK 0117
In the Patna High Court
Case No : CWJC No. 823 of 2012

Nandu Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b)

Citation : (2013) 1 PLJR 426

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Rupak Kumar, for the Appellant; Ajit Kumar, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.

1. Heard learned Counsel for the petitioner and the State. A counter affidavit is stated to have been filed yesterday, which is not on record. The office shall locate and place it on record. Let a Xerox copy of the counter affidavit placed by Counsel for the State be retained on record also.

2. The petitioner is aggrieved by the order dated 10.10.2011 initiating fresh departmental proceedings against him under Rule 43(b) of the Bihar Pension Rules (hereinafter referred to as "the Pension Rules") and the issuance of a fresh memo of charge.

3. The primary ground of challenge is that the charges relate to events of the year 1990. The charge being with regard to an event more than four years old from the date of the charge, the proceedings were barred under Rule 43(b) Proviso of the Pension Rules.

4. It is submitted that a departmental proceeding was initiated against the petitioner while in service. A final order of punishment was passed on the last date before superannuation i.e. 31.10.2008 inter alia for 50% reduction of

pension. On challenge, this Court on 28.6.2011 in CWJC No. 824 of 2009 held that no order under Rule 43(b) of the Pension Rules could have been passed against him till the mid-night of 31.10.2008 whereafter only his superannuated status takes effect. The order of punishment was set aside to that extent. Fresh departmental proceedings were barred by law. Reliance was placed on State of Bihar and others Vs. Mohd. Idris Ansari, .

5. Counsel for the State submitted that a departmental proceeding is initiated when the memo of charge is issued. That was done while in service. The order dated 10.10.2011 is not a fresh departmental proceeding but a continuation of the earlier proceeding. The memo of charge enclosed to the impugned order is nothing but a reiteration of the earlier charges. Liberty was granted in CWJC No. 824 of 2009 to proceed afresh in accordance with law. The case of Mohd. Idris Ansari (supra) is distinguishable as in that case the entire proceedings were quashed which automatically meant that the charge-sheet also stood quashed necessitating a fresh memo of charge. Reliance is placed on Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others, to urge that a fresh charge-sheet and the need for a de novo enquiry may arise if the entire earlier proceeding including the charge sheet stood quashed and not otherwise. The Court may give a purposive interpretation in context of the nature of the provisions of Rule 43(b) as the matter is important and can have wider implications. The substance of the matter and not the form may be seen.

6. A memo of four charges was served upon the petitioner on 20.11.1999. A final order imposing two punishments came to be passed on 31.10.2008. A sum of Rs. 1,33,800/- was held recoverable in lump sum after deducting a sum of Rs. 12,000/- already recovered. The second punishment was for reduction of 50% of the pension. The first punishment is stated to have attained finality inter parties and shall not be affected and stands excluded from the present discussion.

7. The second punishment withholding 50% of the pension was held to be without jurisdiction as on that date the master-servant relationship subsisted. Liberty was granted to the respondents. It was in context of the same departmental proceeding initiated while in service. If the respondents had proceeded under the liberty granted by the Court, there was no need for them to issue any fresh memo of charges to the petitioner. The proceedings would have continued simpliciter under Rule 43(b) of the Pension Rules having been initiated while in service. If instead of adopting that simple procedure, the respondents consciously and voluntarily opted to choose a more arduous path and procedure, it is for them to find the answer why they did so. The State has panel of experienced legal advisors to aid and assist. If such aid and advice is shunned and orders contrary to well settled law are passed, the Court has no option but to set aside such orders. What shall be the effect of the order and what consequence it may have cannot be a relevant consideration to control the mind of the Court in passing the order if otherwise a citizen is entitled to that relief in accordance with law.

8. The memo of charge issued on 20.11.1999, in service, has been whittled down and abandoned by the respondents themselves through a conscious act. A fresh memo of four charges has been issued to the petitioner on 30.9.2011. The order in no uncertain terms states that a fresh proceeding had been decided to be held against the petitioner under Rule 43(b) of the Pension Rules. The submission on behalf of the State that it was not a fresh memo of charge but a continuation of the earlier is belied from the express language of the order. The submission is but a challenge to their own memo of charge dated 10.10.2011 which is impermissible.

9. No authority, much less the Court, can give any direction to act contrary to the law by granting any liberty. The liberty granted was to continue with the proceeding initiated while in service under Rule 43(b). The Court cannot give liberty to frame fresh charge under Rule 43(b) with regard to a matter more than four years old from the date of the charge.

10. The original order dated 31.10.2008 may have been a bonafide error. A repetition of an action contrary to law dated 10.10.2011 cannot be a bonafide error.

11. The order of a Court of law has to be read as a whole and lines cannot be culled out from it torn out of context to interpret what the judgment may or may not lay down. In Mohd. Mohd. Idris Ansari (supra) the first punishment was passed on 6.6.1992 while in service. It was set aside on the ground that the principles of natural justice were violated. Liberty was granted to proceed afresh against the respondent. The respondent retired on 31.1.1993. The proceedings were then sought to be initiated after superannuation on 17.7.1993/27.9.1993 under the Pension Rules. The allegations related to 1986-87, more than four years prior to 27.9.1993. Affirming the judgment of the High Court it was held:--

6. Having given our anxious considerations to these rival contentions, we find that the decision of the High Court on the facts of the present case is unexceptionable. The earlier notice dated 17.7.1993 by which fresh departmental proceedings were sought to be initiated was rightly quashed by the High Court as it was based on the alleged misconduct of the respondent during 1986-87 which was more than four years prior to the issue of the said notice. Such a notice seeking to initiate fresh departmental proceedings after the retirement of the respondent, was clearly hit by the proviso to sub-rule (b) of Rule 43 of the Rules.

12. Learned Counsel for the petitioner has also relied upon Bhubneshwar Sharma Vs. The State of Bihar and Others . A similar objection was raised on behalf of the State noticed at para 10 of the judgment. It was observed at paras 11 and 12 as follows:--

11. The order passed by a Government functionary shall be tested on basis of the recitals contained in the order. This Court shall, therefore, primarily consider the recitals in the impugned order dated 25.5.2009 to decide. whether it was the initiation of a fresh departmental proceeding under Rule 43(b) of the Bihar

Pension Rules or was it continuation of a proceeding initiated on 24.3.1993. It is only in the event of any ambiguity in the order that the question of this court taking into consideration any interpretation by the Respondents of their own order shall arise.

12. This Court on a bare perusal of the order dated 25.5.2009 is satisfied that it was not a continuation of the earlier proceedings dated 24.3.1993. The order specifically states that the Government has resolved to initiate proceeding for the narrated charges under Rule 43(b) of the Bihar Pension Rules. It encloses as item 4, Annexures-1 & 2 in support of the charges and calls upon the petitioner to submit his show cause and also grants him opportunity that if he so wants he can ask for documents or takes the same by making a request before the Inquiry Officer. The order also appoints an Inquiry Officer and a Presiding Officer afresh. Had the order stated that the Respondents propose to hold further enquiry into the earlier memo of charges dated 24.3.1993 and for reasons of facilitation "the Inquiry Officer and the Presenting Officer were changed by passage of time, the matter would have been otherwise. In fact, this court has noticed from the facts that it was procedural non-compliance on the part of the Respondents, which led this court to interfere both in CWJC No. 5451 of 1996 and L.P.A. No. 571 of 2008. There was no need to commence a fresh proceedings, serve fresh memo of charges, call for fresh show cause from the petitioner, if it was a continuance of the earlier proceeding. All that was required to be done was to rectify the procedural irregularity found by this Court in the earlier proceedings.

13. The case of Ananta Saha (supra) relied upon by the respondents is completely distinguishable on facts which may be noticed at paragraph 28 of the judgment as follows:--

28. The High Court had given liberty to the appellants to hold de novo enquiry, meaning thereby that the entire earlier proceedings including the charge-sheet issued earlier stood quashed. In such a fact situation, it was not permissible for the appellants to proceed on the basis of the charge-sheet issued earlier. In view thereof, the question of initiating a fresh enquiry without giving a fresh charge-sheet could not arise.

14. It is for the Commissioner of Departmental Enquiries under the State Government to perhaps examine that when more simpler procedure in law were available to protect the interest of the Government, why a more arduous and stretched path was chosen when the order impugned expressly reflects that it was not a result of a casual exercise but the outcome of a decisioned thinking.

15. The order dated 10.10.2011 initiating fresh departmental proceedings under Rule 43(b) of the Bihar Pension Rules and the memo of charge dated 30.9.2011 are quashed. The writ application is allowed.