

(2005) 02 PAT CK 0035
In the Patna High Court
Case No : CWJC No. 1444 of 2000

Nawal Kishore Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Citation : (2005) 4 PLJR 786

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Barin Ghosh, J.—Heard learned counsel for the parties. The petitioner was working as Dalpati. In view of the decision of the Government in 1990 he became a Government employee. Having become a Government employee, the petitioner could not be removed from the service without taking steps as are required to be taken for removal of a Government employee. In the instant case, such removal can only be effected by initiating a disciplinary proceeding against the petitioner and by concluding that disciplinary proceeding in accordance with law after following the requirements of natural justice.

2. In the instant case, it has been contended in the counter affidavit that the services of the petitioner were terminated on 31st July, 1992 and thereupon purported show cause notice was issued. It has not been contended that steps were taken for issuance of show cause notice for the purpose of initiating disciplinary proceeding and that such proceeding was concluded in accordance with law and after following the principles of natural justice. In any event, question of initiation of disciplinary proceeding after issuing order of termination does not arise at all. It is true that the order of termination is dated 31st July, 1992 and the petitioner has approached this Court in 2000 but the fact remains that there is nothing in the counter affidavit from where it would appear that the order dated 31st July, 1992, in fact, has been served upon the petitioner. It is the contention of the petitioner that he had no knowledge until such time the counter

affidavit was filed that his service has been terminated on 31st July, 1992. In fact, the petitioner had approached this Court by filing the present writ petition seeking a direction for release of his salary on the ground that the disciplinary proceeding pursuant to the charge-sheet has not yet been concluded for no just reason.

3. In such view of the matter, the purported order of termination dated 31st July 1992 is set aside. All steps taken including the show cause issued subsequent to 31st July, 1992 are also set aside. It shall, however, be open to the respondents to initiate a fresh disciplinary proceeding against the petitioner, if they are so advised. Within a period of twelve weeks from the date of service of a copy of this order upon the respondents, the appropriate respondent shall consider whether the petitioner was gainfully engaged in other profession or vocation since 31st July, 1992 until today and if they find that he was not so engaged, the respondents shall pay the salary of the petitioner from 31st July, 1992 until today within a period of two weeks from the expiry of the aforementioned twelve weeks. In the event, it is found that the petitioner was so engaged, the respondents shall ascertain as to how much the petitioner had earned during that period and if such earning was less than his salary, the difference shall be paid to the petitioner by the respondents within the period as mentioned above. The above findings of the respondents shall be communicated to the petitioner in writing. It is made clear that in the matter of making such enquiry whatever assistance the respondents will seek from the petitioner, the petitioner shall make the same available to the respondents. This writ petition stands allowed with the above directions/observations.