
(2006) 06 PAT CK 0005
In the Patna High Court
Case No : CWJC No. 1977 of 2005

Pramod Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (2006) 3 PLJR 296

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Ashok Kumar Choudhary and Anshu Dhar Sharma, for the Appellant;
Jitendra Singh, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard learned counsel for the Petitioner and the Respondents. Petitioner, who served as Librarian in the Bihar State Credit & Investment Corporation Ltd. (hereinafter referred to as "the Corporation"), has filed this writ petition assailing the order dated 6.11.2004, Annexure-10, whereunder the Managing Director of the Corporation has held him guilty of the charges of continued unauthorized absence for more than 35 days as also of non-cooperation in the departmental proceeding and has proceeded to terminate his services by resorting to the powers contained in Rule 71 (vi) of the Service Rules of the Corporation, which inter alia empowers the appointing authority to terminate the services of the employees of the Corporation for unauthorized continued absence exceeding 8 days without intimation or sufficient cause.

2. Petitioner was initially appointed as an Incentive Clerk in the Corporation on 15.9.1982 and was promoted to the post of Librarian vide order bearing Memo No. 2116 dated 8.10.2002 and was also sent on deputation but his services was returned to the Corporation vide office Order No. 922 dated 22.9.2004. Petitioner applied for Earned Leave of 20 days for the period between 1.10.2004 to 20.10.2004, vide application dated 30.9.2004, Annexure-1 on the ground that he

was suffering from chest, waist and knee pain. In support of his claim he also appended the prescription granted by the attending physician dated 30.9.2004, Annexure-2. Before he could learn the result of his application dated 30.9.2004, his condition became serious on 3.10.2004 and he had to be admitted in Laxmi Nursing Home for that day with instruction that if pain further increased, he should be referred to the Indira Gandhi Institute of Cardiology immediately. Petitioner was discharged from Laxmi Nursing Home on 4.10.2004 as is evident from the bill-cum receipt issued by the said Nursing Home and is appended with the prescription dated 3.10.2004 and thereafter examined by the attending physicians of the Indira Gandhi Institute of Cardiology as an outdoor patient on 4.10.2004 when he was advised to undertake various investigations, including ECG, Blood Sugar, Creatinine, Lipid Profile and Treadmill Test with further direction to avoid exertion until investigations were completed. For Treadmill test, appointment in the Indira Gandhi Institute of Cardiology itself was fixed for 16.11.2004 as is evident from the instructions issued to the petitioner and is available at page 24 of the brief. On 4.10.2004 petitioner was also examined for his back pain in the outdoor patient department of the PMCH and was advised absolute bed rest for three weeks as is evident from the slip issued to the petitioner after his examination on 4.10.2004 by the outdoor patient department of the PMCH, which is available at page 25 of the brief. While petitioner remained under medical advice, his application dated 30.9.2004 for grant of Earned Leave for the period between 1.10.2004 to 20.10.2004 was considered and rejected as is evident from the order bearing Letter No. 1089 dated 3.10.2004, Annexure-4 with direction to join the duties without any delay. When the petitioner learnt about the aforesaid order dated 3.10.2004, Annexure-4 rejecting his application for grant of Earned Leave for the period between 1.10.2004 to 20.10.2004 he again informed the Managing Director of the Corporation under application dated 5.10.2004, Annexure-5 about the state of his illness including the fact that he was admitted in the Nursing Home on 3.10.2004 and thereafter he was examined by the PMCH doctors who advised him to undertake complete bed rest for three weeks and in the circumstances he again renewed his prayer for grant of medical leave for the period between 1.10.2004 to 20.11.2004.

3. It appears, ignoring the request of the petitioner contained in his application dated 5.10.2004, Annexure-5 for grant of medical leave for the period 1.10.2004 to 20.11.2004, the authorities of the Corporation issued office order, bearing Memo No. 1168 dated 7.10.2004, Annexure-6 placing him under suspension with immediate effect for his failure to join duties with effect from 1.10.2004 even after rejection of his application dated 30.9.2004 for grant of Earned Leave for the period between 1.10.2004 to 20.10.2004, as failure to join the duties was demonstrative of his indifferent attitude towards the Corporation and duties assigned to him. Later, under Memo No. 1281 dated 15.10.2004, Annexure-7, petitioner was called upon to answer the charges made out against him under office order, bearing Memo No. 1168 dated 7.10.2004, Annexure-6 before the Conducting Officer on 18.10.2004 at 11.00 A.M. Under report dated 20.10.2004,

Annexure-B to the supplementary affidavit filed on behalf of the Respondent Nos. 2 to 4 (hereinafter referred to as the supplementary affidavit), Officer-in-charge, S.K. Puri P.S., Patna was informed about the failure of the petitioner to handover the keys of the library and under office order dated 26.10.2004, Annexure-8 the library was directed to be unlocked for preparation of the inventory of the books in presence of Sri Sanjay Singh, Advocate as also in presence of two officers of the Corporation, namely, Sri Ashok Verma, I/C Legal and Shri O.P. Singh, Assistant Manager (Legal), but due to some unavoidable circumstances, the date and the time of unlocking of the library and preparation of the inventory of the books was shifted to 10.11.2004 at 4.00 P.M. as would appear from the office order dated 28.10.2004, Annexure-9.

4. The Conducting Officer submitted his Enquiry Report dated 1.11.2004, Annexure-C to the supplementary affidavit holding that the petitioner neither denied the charges nor he made any representation against the charges contained in Memo No. 1168 dated 7.10.2006, Annexure-6, which is not only demonstrative of his indifferent attitude but also tantamounts to admitting the charges. The Enquiry Report was considered by the Managing Director who passed the impugned order dated 6.11.2004, Annexure-10 terminating the services of the petitioner in terms of the powers contained in Service Rules 71 (vi) as according to the Managing Director the request of the petitioner for grant of 20 days Earned Leave to consult the doctor in connection with his body ache was wholly unreasonable coupled with the fact that he did not even cooperate in conducting the departmental proceeding.

5. Learned counsel for the petitioner has assailed the aforesaid suspension order dated 7.10.2004, Annexure-6, Enquiry Report dated 1.11.2004, Annexure-C to the supplementary affidavit and impugned order dated 6.11.2004, Annexure-10 as wholly arbitrary and having been passed without considering the relevant materials, including the prescription dated 30.9.2004, 3.10.2004, 4.10.2004 submitted before the Managing Director with the application dated 5.10.2004, Annexure-5 after he became ill on 3.10.2004 and was admitted in the Laxmi Nursing Home as also was examined by the doctors in the PMCH. It is further submitted by the learned counsel for the petitioner that if the prescription and the certificates dated 30.9.2004, 3.10.2004 and 4.10.2004, as contained in Annexures-2 series were not reliable then the Managing Director ought to have directed the petitioner to appear before any of the doctors of his choice to confirm his physical condition as has been indicated in the aforesaid prescription and the certificates, but in no case the Managing Director should have rejected the same merely on his ipse dixit. He further submitted that from the application and the prescriptions referred to above, it would appear that petitioner never remained absent wilfully from his duties. It was only on account of his physical ailment that he could not report for his duties after rejection of his application for Earned Leave. In this connection he relied upon the judgment of the Hon'ble Supreme Court in the case of North Eastern Karnataka R.T. Corporation vs. Ashappa & Anr., reported in 2006 AIR SCW 2644 to submit that the action to

terminate the employees for remaining absent for a long period should only be taken if the employee has remained wilfully absent for a longer period. In the present case petitioner remained absent for only 35 days that too when he was critically ill as is evident from his application and prescription. In the circumstances no action at all was warranted against the petitioner.

6. He further submitted that the powers of the appointing authority to terminate the services of the employees if they remained absent from the duty for a continued period of 8 days without intimation or sufficient cause is wholly arbitrary and is violative of Articles 14 and 16 of the Constitution of India. In this connection, learned counsel referred to the case of *Sobhana Das Gupta vs. The State of Bihar & Anr.*, reported in 1974 PLJR 382 and the case of *Mohit Ram vs. The Bihar State Electricity Board*, reported in 1994(2) BLJ 146. Perusal of the judgment rendered in the case of *Sobhana Das Gupta* (supra) indicates that thereunder the Division Bench of this Court considered the validity of similar provisions contained in Rule 76 of the Bihar Service Code which empowered the State Government to determine the services of a Government servant who remained absent from duty for five years. The said provision was held to be ultra vires Article 311 of the Constitution of India as services of Government servant could not be dispensed with without resorting to an Enquiry in terms of Article 311 of the Constitution of India. Perusal of the Division Bench Judgment rendered in the case of *Mohit Ram* (supra) indicates that the similar provisions contained in Clause 24 of the Standing Order of the Bihar State Electricity Board, which empowered the Board to terminate the services of its employees who overstayed the period of leave, was held ultra vires Articles 14 and 16 of the Constitution of India. Learned counsel on the strength of the aforesaid case law asserted that the provisions contained in Rule 71 (vi) of the Service Rules should be held ultra vires Articles 14 and 16 of the Constitution of India.

7. Learned counsel for the Corporation, on the other hand, has reiterated the observations made in the impugned order and has further submitted that persons like the petitioner should not be allowed to serve the Corporation even for a moment as when the Corporation required his services for collecting the non-performing assets so as to make the Corporation viable he became absent by feigning illness and close perusal of the certificates appended in Annexure-2 series would itself indicate that the same have been obtained only with a view to suit the case of the petitioner. Had he been really ill he should have confined himself to the certificates granted by one of the hospitals and ought not to have hopped from Laxmi Nursing Home to Indira Gandhi Institute of Cardiology and from there to PMCH. The attempt of the petitioner to visit three different hospitals is only an endeavour to secure the certificates which should suit his purpose.

8. As regards the validity of the powers of the Managing Director of the Corporation to terminate the services of the employees of the Corporation by resorting to the provisions contained in Rule 71 (vi), learned counsel for the

Corporation submitted that in the instant case services of the petitioner has been terminated in due course after giving ample opportunity to defend on conclusion of the departmental enquiry in which finding was recorded that even after rejection of the leave application petitioner failed to join duties as also failed to cooperate in departmental proceeding. In the circumstances, the Managing Director of the Corporation had no option, but to terminate his services and thus the question of validity of the Rules may not arise in the instant case as the same has been resorted to only after reaching the finding of guilt in the departmental proceeding.

9. Having heard the counsel for the parties and having perused the documents including the prescriptions issued by the attending physicians on 30.9.2004, 3.10.2004 and 4.10.2004, Annexure-2 series as also the application of the petitioner dated 30.9.2004, Annexure-1 and 5.10.2004, Annexure-5, I am satisfied that the findings reached by the Enquiry Officer and the Managing Director that the petitioner was feigning illness is merely ipse dixit of the authorities. If the authorities disbelieved the contents of the prescriptions, Annexure-2 series and the request contained in application dated 30.9.2004 and 5.10.2004, Annexures-1 and 5, then they ought to have referred the petitioner to a Medical Board or to a physician of their choice. Without referring the petitioner to the Medical Board/physician, there was absolutely no material before the authorities to conclude that the petitioner was feigning illness. In the circumstances, I have no option but to hold that there was no material to conclude that the petitioner was wilfully absent from his place of duty for more than 35 days as has been held in the impugned order and, accordingly, suspension order dated 7.10.2004, Annexure-6, Enquiry Report dated 1.11.2004, Annexure-C to the supplementary affidavit and the impugned order dated 6.11.2004, Annexure-10 is set aside with direction to the authorities of the Corporation to reinstate the petitioner forthwith and to pay the entire arrears of salary not only for the period of suspension but also for the period of his removal within a period of three months from the date of receipt/production of a copy of this order.

10. The submission that the powers of the appointing authority to terminate the services of the employee of the Corporation for his absence from duty for a continued period of 8 days without intimation or sufficient cause does not appear to be violative of Articles 14 and 16 of the Constitution of India if the said power, as in the present case, was exercised after resorting to a departmental proceeding to ascertain the grounds and sufficiency of absence but if the said power is exercised without any enquiry to ascertain the cause and sufficiency of absence then certainly the said power is violative of Articles 14 and 16 of the Constitution of India for the reasons indicated in the judgment rendered by the Division Bench of this Court in the case of Mohit Ram (supra). In the result, this application is allowed. No cost.