

(2018) 01 PAT CK 0130

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5 Of 2015

Prem Kumari Devi

APPELLANT

Vs

State Of Bihar Through The Secretary And Ors

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

Citation : (2019) 2 PLJR 464

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Sanjeev Kumar, Kumar Alok

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and State.
2. Learned counsel for the petitioner is permitted to implead the District Programme Officer (Establishment), Patna, as respondent no. 8 in view of the post of District Superintendent of Education being converted into that of District Programme Officer (Establishment).
3. Let necessary correction be made by learned counsel for the petitioner in the cause title of the writ petition during the course of the day.
4. Learned counsel for the State takes notice on behalf of the newly added respondent.
5. The petitioner has move the Court for the following reliefs :
 - (i) To quash the order vide memo no. 1342 dated 05.03.2010 issued under the signature of the District Superintendent of Education, Patna, whereby and whereunder, the petitioner was deprived from salary of suspension period and allowance of suspension.
 - (ii) Also for commanding the respondent authorities to pay salary of suspension

period from 02.05.2009 to 31.12.2009.

(iii) Any other relief/reliefs for which the petitioner may found entitled in the eye of law.

6. In sum and substance, the petitioner is aggrieved by the fact that as her suspension was on a non-est grounds she should be paid her full salary and other emoluments for the period of suspension till her date of superannuation.

7. The petitioner being In-Charge Headmaster of Primary School, Gopalpur, Naubatpur, in the district of Patna, was entrusted with the responsibility of construction of ramp in the school in March, 2009, which was pursuant to the direction of the Election Commission of India for facilitating casting of vote by disabled persons. An inspection was held by the District Superintendent of Education, Patna, on 30.04.2009 and a report was submitted that the ramp was not completed and, accordingly, five persons, including the petitioner, were placed under suspension by order dated 16.05.2009 issued by the District Superintendent of Education, Patna. The said order also contained two charges. The first one was that there was violation of the order of the superior authority and the second was that the ramp was not constructed in time.

8. Learned counsel for the petitioner submitted that the time granted for construction of ramp, as per the Government communication, was 30.04.2009 and, thus, an inspection being made on 30.04.2009 was not proper as a ramp hardly takes a few hours for construction and the inspection obviously having been made during the day, i.e., working hours, was erroneous as only on 1st of May, 2009, if the ramp had not been constructed there could have been a charge of such non- construction. Learned counsel submitted that the same was also communicated to the District Superintendent of Education, Patna, under letter dated 01.05.2009 but as it was a holiday, the same was actually served in the office on 02.05.2009 and the suspension order having been issued two weeks thereafter without considering the said fact is arbitrary and unjustified. It was submitted that the petitioner had moved the Court against her suspension order in C.W.J.C. No. 15524 of 2009 in which by order dated 26.02.2010, the Court had directed for filing of counter affidavit and given interim protection to the petitioner by staying any coercive action against her. Learned counsel submitted that the writ petition was finally disposed by order dated 18.01.2011, as in the meantime, in

the counter affidavit, order dated 05.03.2010 was brought on record and the Court gave liberty to the petitioner to challenge the same in a fresh writ application. It appears that the petitioner has also filed C.W.J.C. No. 9078 of 2010 seeking retiral dues which also stood disposed by order dated 21.05.2010 directing for filing of representation by the petitioner and consideration of the same. The petitioner was finally visited with punishment order, contained in memo no. 1342 dated 05.03.2010, passed by the District Superintendent of Education, Patna, by which it has been held that for the period of suspension neither salary etc. nor subsistence allowance was payable and only for the purpose of pension the period would be counted. The same is under challenge in present application.

9. It was submitted that the order impugned is totally unsustainable for the reason that subsistence allowance cannot be forfeited and, moreover, in the discussion portion, it has been held against the petitioner that she has not complied with the order given to her in the order of suspension itself with regard to joining at the headquarters. Learned counsel submitted that the said charge was never levelled against the petitioner at any point of time and, thus, cannot be a factor for consideration while passing the final order.

10. Learned counsel for the State supported the order impugned. However, on a direct query of this Court as to whether the time granted for the construction of the ramp was 30.04.2009 and, thus, inspection made on 30.04.2009 was proper, as the petitioner had time till midnight of 30.04.2009 to ensure completion of the ramp, learned counsel for the State does not dispute the proposition. Further, on query as to how the charge of petitioner not complying with the direction in the order of suspension to join at headquarters can be taken note of in the final order, which is impugned, as it was never a part of the charges neither initially nor subsequently, learned counsel is again not in a position to explain or defend the same. Furthermore, when called upon to take a stand as to whether subsistence allowance can be withheld, as has been done, again learned counsel for the State is not in a position to defend the same.

11. Having considered the facts and circumstances of the case and submissions of the learned counsel for the parties, the Court finds the order impugned to be unsustainable, for the reason, that once it is admitted that 30.04.2009 was the last date for completing construction of the ramp and the

inspection being some time in the forenoon on 30.04.2009 coupled with the fact that the petitioner had given a representation on 01/02.05.2009 to the

District Superintendent of Education, Patna, that the ramp was completed and with regard to which there is no report contradicting the same and

learned counsel for the State also having taken a stand that he does not have any instruction to the contrary. Upon going through the order impugned it

transpires that there is reference to an enquiry report in which the allegations have been held to be proved. Learned counsel for the petitioner took a

categorical stand that neither any enquiry was conducted nor any copy of any report submitted to her nor second show cause asked. On these issues

also learned counsel for the State submitted that he has not got any instructions to the contrary and, thus, cannot controvert the same.

12. The Court basically has to go on the memo of charge and the order passed. The memo of charge itself, at the cost of repetition, states that the

petitioner had violated the orders of the superior authority. There is absolutely no description or explanation or instance of what order was violated.

With regard to the same also learned counsel for the State has not been able to show to the Court any instance or detail of such violation of any order

of the superior authority by the petitioner till the issuance of the said memo on 16.05.2009. Thus, the Court has no hesitation to hold that the said

charge being totally vague cannot be even considered as a charge and is inconsequential. With regard to the second charge of not completing the

construction of the ramp on time, once it is admitted that the time was till 30.04.2009 and inspection having been made in the forenoon on 30.04.2009

itself and keeping in kind the fact that construction of ramp can be done within a few hours, the petitioner had till midnight of 30.04.2009 to make

construction and she has represented on the very next working day to the District Superintendent of Education, Patna, with regard to the ramp having

been constructed and there being no finding or enquiry or report contradicting such fact as the same has neither been brought on record in the counter

affidavit nor learned counsel for the State is in a position to controvert, the Court holds that the said charge is not proved. Thus, upon overall

consideration of the matter, the Court comes to the conclusion that in fact the suspension itself appears to be unwarranted as none of the charges are

even remotely proved.

13. In view thereof, the writ petition stands allowed. The order impugned is set aside. The petitioner is held entitled to full salary and other emoluments for the post which she held at the time of her superannuation, for the period of her suspension. The amount be calculated and paid to the petitioner latest within a period of two months from the date of production of a copy of the order before the respondent no. 8.