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(2007) 03 PAT CK 0166

In the Patna High Court

Case No : CWJC No. 11314 of 2003

Ragendra Prasad Singh APPELLANT

Vs

The Bihar State Road Transport Corporation and Others RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Citation : (2007) 3 PLJR 626

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Arvind Kumar and Ashok Kumar, for the Appellant; S.R. Sharan, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard Learned Counsel for the parties. The petitioner was appointed as conductor in the Bihar State Road Transport Corporation (hereinafter referred to as "the Corporation"). He was appointed in this capacity as a conductor on 1.1.1966. He subsequently superannuated on 31.7.2001. During his entire stretch of service there is nothing adverse against him. On 6.7.2000 an inspection was carried out in the bus in which the petitioner was the conductor. This bus was in service and operating between Calcutta and Chapra. During the course of inspection 57 passengers were found traveling in the bus Except for the two passengers everybody was holding valid tickets. It is said that these two persons who were found to be without tickets were Coolee and Khalashi who work at Calcutta Beliahat Bus Stand Since the Corporation did not have any infrastructure at Calcutta the services of these two persons used to be taken in the bus operating in this route. Though they were not employees but initially part of establishment. The contention of the petitioner, therefore, is that they were more like staff rather than passenger who had to be issued tickets. In any case these two persons were issued tickets and a sum of Rs. 358/- was recovered from those two passengers as fare.

2. The petitioner was suspended immediately on 6.7.2000 itself and a charge

sheet came to be issued on 17.7.2000 The basic charge against the petitioner was that he had failed in his duty be-cause he had collected money from these two passengers who had not been issued the necessary tickets and pocketed the money in question. In the enquiry only official witnesses were produced in support of the charge. No evidence was taken with regard to these two passengers to establish whether they had actually paid this money to the petitioner and the petitioner failed to issue tickets to them. The authority came to a conclusion that the petitioner has committed serious breach of trust because by his conduct he had misappropriated the revenue of the Corporation and therefore caused loss.

3. On the basis of the enquiry report the disciplinary authority took a very serious view and decided in its wisdom to issue the order of forfeiture of his entire gratuity as well as leave salary. This was done because the petitioner had superannuated by the time the order of punishment came to be passed in the year, 2003. The disciplinary authority indicates in his order that if the petitioner had not superannuated he would have been dismissed from service.

4. The submission of the petitioner is in two fold: No. 1 : that since the Bihar Service Rule is not applicable to the employees of the Corporation, therefore, the punishment which has been imposed upon him by exercising power under Rule 43(b) of the Bihar Pension Rules is totally misplaced. Secondly that in the given facts and circumstances of the case since there was no decisive finding that the petitioner had collected the money from these two passengers and not accounted for the same. The punishment was excessive, harsh and shows non-application of mind. Since petitioner had put in 34 years of service the punishment of forfeiture of gratuity and leave salary is very harsh and shocking to conscious. The authority ought to have taken the charge into consideration and also kept the fact in mind that despite a long period of service which the petitioner had rendered, there was nothing adverse against him. Therefore, a lenient view ought to have been taken and punishment commensurate to the guilt ought to have been imposed upon him.

5. The respondents, however, states that the punishment has been imposed in the background that the petitioner had caused loss of revenue to the department and secondly that the Bihar Service Code or the Bihar Pension Rules are applicable to the employees of the Corporation. If this rules are applicable to the employees of the Corporation then mere stating that the punishment is being passed under Rule 43(b) would not be enough. Rule 43(b) of the Bihar Pension Rules lays down principle and the procedure which had to be followed while inflicting or exercising power under the said Rules. There is nothing on record to indicate that after the petitioner had superannuated any order converting the departmental proceeding into one under Rule 43(b) was passed. Merely because the petitioner had retired in the meanwhile it does not mean the Rule 43(b) can be invoked to punish him or to pass order of punishment forfeiting his gratuity as well as leave salary.

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6. Another aspect which must be noted in this order is that there seems to be non-application of mind while imposing the punishment against the petitioner because even if it is accepted for argument sake that Rule 43(b) of the Bihar Pension Rules was invoked in case of the petitioner the maximum which the authority could do was to pass order for forfeiture of the gratuity but unfortunately the disciplinary authority has also seized his leave salary. This according to me is highly illegal and not acceptable.

7. this Court gets a feeling that the order was passed with the sole object that the Corporation* will not have an occasion to pay anything to the petitioner after he had superannuated. This was done to run away from shouldering the responsibility of giving retrial benefit to the petitioner. As per the second contention regarding the punishment being excessive or harsh, this Court also feels that in absence of clear cut finding with regard to the petitioner having taken money and pocketed mere fact that two passengers were traveling without tickets and loss of revenue was caused to the Corporation it does not give right to the Corporation to take all the earning of the petitioner which he had legitimately acquired in his entire career. Gratuity is not like bounty but is a property of an employee and same cannot be denied with the whims and caprices of any individual. this Court therefore also feels that the order of punishment imposed upon the petitioner is excessive and harsh thereby violating the principles of proportionality.

8. this Court is of the opinion that the impugned order dated 22.2.2003 contained in annexure-1 deserves to be interfered with and the same is accordingly quashed. This writ application accordingly stands allowed. However, there shall be no order as to cost.

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