
(2011) 12 PAT CK 0082
In the Patna High Court
Case No : CWJC No. 17521 of 2011

Raghubir Prasad

APPELLANT

Vs

Bihar State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Citation : (2012) 3 PLJR 130

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Sujeet Kumar Sinha and Satish Kumar, for the Appellant; P.K. Verma for the BSRTC, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Annexure-7 dated 20th January, 2011 is the consequential order which has been passed by the Administrator of Bihar State Road Transport Corporation. By virtue of this order petitioner was reinstated in service. However, a direction was given that the petitioner would not be entitled for back wages for the period 11.8.1995 till 14.1.2011. However, this period will not be treated as breach in service etc. The Court is required to look into the earlier round of litigation which arose under the circumstances that the petitioner who was holding the post of a conductor came to be dismissed under the order of the Managing Director of the Corporation vide order dated 11.8.1995. This order of dismissal was passed after conclusion of a departmental proceeding initiated against him. Charges were drawn up against the petitioner in relation to events relating to the year 1987 where the petitioner was supposed to have interpolated with vouchers submitted by him, which led to loss of revenue to the Corporation. Those interpolations were pointed out or identified when audit was carried out of those vouchers which, in the opinion of the Corporation, required holding of a departmental proceeding. The details of the charges and the background thereto can be gathered from para 3 of the earlier order dated 24th August, 2010 passed in CWJC No. 3502 of 1996. Copy of the order is Annexure-3.

2. The Court went through the matter, heard the counsel for the parties but since the respondents failed to produce relevant records including the enquiry report, contention of the counsel that prejudice was caused to him by non-service of the enquiry report was accepted. In addition to that, the Court taking into consideration that the charge or the defalcated amount was a meagre one, adding up to Rs. 143.55 Paise only, therefore, a major punishment of dismissal was uncalled for. The Court disposed of the writ application with an observation "Aforesaid aspect of the matter should be born by the authorities while considering the future course of action against the petitioner". The said observation of the High Court led to issuance of Annexure-7, which obviously does not satisfy the petitioner because mere reinstatement is not what he is looking at. He wants something more tangible which is payment of salary and other allowances for the period he was kept out of service between the year 1995 till his reinstatement on 14.1.2011.

3. Submission of the counsel representing the petitioner is that the natural corollary to reinstatement in service is payment of benefit including salary and there has to be cogent reasons for not allowing payment of salary in the circumstances under which reinstatement of the petitioner came about. He presses into service two decisions, one is the case of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, . The other judgment which is being relied upon is the case of Garvi Devi vs. The State of Bihar & Ors., reported in 2003(3) PLJR 701.

4. Mr. P.K. Verma, representing the respondent Corporation, however, justifies the order passed by the Administrator, contained in Annexure-7, not only on the bundle of facts but on legal propositions which emerge from recent trend and set of decisions which have come from the Apex Court. The decisions which Mr. Verma relies are the cases of U.P. State Brassware Corporation Ltd. and Ors. vs. Uday Narain Pandey, reported in (2006) 1 SCC 250, APSRTC and Others vs. B.S. David Paul, reported in (2006)1 SCC (L&S) 287 [: 2006(2) (SC)34], Rajasthan State Road Transport Corporation vs. Shyam Bihari Lal Gupta, reported in (2006)1 SCC (L&S) 67, V. Ramana vs. APSRTC and Others, reported in (2006)1 SCC 69 and U.P. State Spinning Corporation vs. R.S. Pandey, reported in (2006)1 SCC (L&S) 78.

5. A reading of all the judgments cited on behalf of the respondents points to one indicator that reinstatement in service by itself does not entitle an employee to an automatic or mechanical grant of full back wages. In fact the Hon"ble Supreme Court in the case of U.P. State Brassware Corporation Ltd. (supra) talks in terms of the old view and the new view or trend. It does hold that full back wages cannot be allowed automatically or mechanically only because an order of termination is found to be unsustainable. Court has to apply itself to the issues on the given facts and circumstances of each case. Such view stands reiterated in the other decisions noted above.

6. If that is the line and trend of the decisions of the Apex Court with regard to

grant of back wages, then the claim of the petitioner for a direction upon the respondents for grant of back wages would not flow in his favour as a matter of right. He has to satisfy the court that the order of dismissal was such so palpably wrong, unfair and unjust that the reinstatement should beget him the benefit as a matter of course because it was the illegal act of the respondents which kept the petitioner away from his rightful claim to perform his official duty as a permanent employee of the organization. There are cases where arbitrariness is writ large on the face of record or illegality can be read across the face of such decisions. If the Court decisively intervenes and holds that such a decision cannot be sustained in the eye of law with no contributory factor on part of the employees, the Court does take a generous view and does pass a direction for reinstatement with all consequential benefits, which can even include promotion etc. depending on the facts of the case. But is it so in the present case?

7. Petitioner was proceeded against departmentally for interpolation and fudging of records, which led to loss of revenue for the Corporation which was already in financial shambles. Conduct of the petitioner may be a small nail in a coffin but it was a nail all the same which contributed to overall deteriorating situation of the Corporation of the financial kind. Evidence has come during the enquiry against the petitioner on this count. However, as good luck would have it for the petitioner respondents could not locate the file relating to the departmental proceeding and they could not decisively establish that a copy of the enquiry report was furnished upon the petitioner.

8. High Court in its earlier order to that extent could not be faulted by saying that it was an illegality which may go to the root of the matter when it came down to imposition of final punishment. But, there is a significant aspect which emerges from the said order which is evident from the concluding part of the said order (Annexure-3), where the Court opines that looking at the meagre sum, punishment of removal/dismissal was too harsh. The Court states that it was not a case for major punishment but it left the matter open to the respondents in this regard. If those concluding parts are read with due dispassion then obviously petitioner was given benefit on the principle of proportionality and not on the ground of nonculpability of the petitioner as to the charges. The fact that the Court did not give decisive direction as what was required to be done by the respondents is a clear indicator as to the factor which went or weighed on the mind of the Court while allowing the writ application. If the Court was convinced that the petitioner had been dealt with in a totally unfair manner, without any material being available, there would have been those significant directions including the direction for reinstatement and payment of consequential benefit, to say the least.

9. In the opinion of the Court, leaving the matter at that, did give a leeway to the respondents to proceed with the matter further, may be after furnishing a copy of the enquiry report which has not been done till date. Looking at the time frame which has elapsed, the period petitioner was terminated and when the

order of the court came to be passed in terms of Annexure-3, as also taking into consideration that the date of superannuation of the petitioner was not very far, reinstatement was ordered and observation of the court to that extent was honoured.

10. The question which arises now is whether the respondent Corporation was found wanting in not allowing the benefit of salary for the period of dismissal till reinstatement?

11. In the opinion of this Court it is not so. If the decisions of the Hon"ble Apex Court are taken into consideration and have been passed in series of decisions noticed in the earlier part of the order, then reinstatement does not beget the petitioner the benefit of salary or back wages as a matter of routine. The circumstances which compelled the respondents to take a harsh decision against the petitioner and the finding and observation given by the High Court earlier in relation to the case of the petitioner cannot be overlooked altogether. It is one of those cases where the Court has to consider the matter from the point whether petitioner is entitled for payment of back wages as a matter of right.

12. The Court does not feel so because the intervention of the High Court earlier in terms of Annexure-3 does not confer such a benefit to the petitioner as a course and there are circumstances to show that the petitioner cannot claim back wages for the period he was dismissed till the period he was reinstated as a right.

13. However, the fact still stands that the High Court in its earlier order did find flaw in the manner in which the order of punishment came to visit the petitioner, coupled with the fact that the order of punishment was found to be harsh, the Court directs payment of half of the wages to the petitioner from the period he was dismissed till the period of his reinstatement. Writ is allowed to the extent indicated above.