

(2016) 01 PAT CK 0061

In the Patna High Court

Case No : Letters Patent Appeal No. 1710 of 2015 in Civil Writ Jurisdiction Case No. 12750 of 2007 and Letters Patent Appeal No. 1711 of 2015 in C. Rev. 48 of 2015

Raj Kishore Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 01 PAT CK 0061

Hon'ble Judges : I.A. Ansari, Actg. C.J. and Chakradhari Sharan Singh, J.

Bench : Division Bench

Advocate : Mrigank Mauli, for the Appellant; S. Raza Ahmad, for the Respondent

Final Decision : Partly Allowed

Judgement

Chakradhari Sharan Singh, J.—1. These appeals under Clause 10 of the Letters Patent of this Court, have preferred by the appellant, being aggrieved by orders, dated 21.01.2015 and 12.08.2015, passed by a learned single Judge in CWJC No. 12750 of 2007 and Civil Review No. 48 of 2015 respectively.

2. A departmental proceeding had been initiated against the appellant, who, at the relevant point of time, was posted as Junior Engineer, Sherghaty, under Road Construction Department, Government of Bihar, on the charge of certain misconduct committed by him.

3. Before issuance of the charge-sheet, the appellant was placed under suspension by an order, dated 21.09.2005. The Inquiry Officer, appointed to enquire into the charges levelled against the appellant, submitted his report, on 24.01.2006, to the effect that none of the charges levelled against him could be held to have been proved. Disagreeing with the report of the Inquiry Officer, the disciplinary authority issued a notice to the appellant seeking his explanation on his findings through a communication, dated 03.07.2006. The appellant

submitted his reply. By an order, dated 14.07.2006, the Disciplinary Authority decided to, impose, upon the appellant, the following punishments:-

"(i) Reduction of the appellant to lowest stage in time scale of pay.

(ii) For the period of suspension, the appellant shall not be admitted to any other allowance already paid to him."

4. Aggrieved by the said order, dated 14.10.2006, issued under the signature of the Deputy Secretary-cum-Chief Vigilance Officer, Road Construction Department, Government of Bihar, the petitioner filed an application, under Article 226 of the Constitution of India, giving rise to CWJC No. 12750 of 2007. He also challenged the very initiation of the departmental proceeding with framing of charges and issuance of the notes of disagreement issued by the disciplinary authority against findings of the Inquiry Officer, wherein the charges against the appellant were not found to be proved. The challenge was on the ground, inter alia, that the departmental proceeding was initiated against him under Rule 55 of the Civil Service (Classification, Control and Appeal) Rules, 1930 (hereinafter referred to as the Rules of 1930), which stood repealed with the coming into force of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the Rules of 2005).

5. Learned single Judge, however, dismissed the writ application by the order, dated 21.01.2015, which is under appeal in LPA No. 1710 of 2015. The appellant, thereafter, preferred a review application seeking review of the said order, dated 21.01.2015, passed in CWJC No. 12750 of 2007, which gave rise to Civil Review No. 48 of 2015. The said Civil Review No. 48 of 2015 came to be dismissed by an order, dated 12.08.2015, passed by the learned single Judge, which is under appeal in L.P.A. No. 1711 of 2015. This is why, both the appeals have been heard together with the consent of the parties and are being disposed of by the present common judgment.

6. Assailing the order, dated 21.01.2015, passed by the learned single Judge, Mr. Mrigank Mauli, learned counsel, appearing on behalf of the appellant, has submitted that the Rules of 1930 came to be repealed, with effect from 12.07.2005, by operation of Rule 32 of the Rules of 2005. He accordingly submits that entire action initiated against the appellant under repealed rules, i.e. Civil Service (Classification, Control & Appeal) Rules, 1930, right from the stage of framing of charges till passing of final order is without jurisdiction. He would contend that the disciplinary authority wrongly imposed, upon the appellants, major punishment, as noted above, by an order, dated 14.10.2006, of reduction of the appellant "to lowest stage in time scale of pay" under the repealed Rule 49 (iii) of the Rules of 1930. He would submit that the extant rules, i.e., Bihar Government Servant (Classification, Control & Appeal) Rules, 2005, do not envisage imposition of the said punishment. He would contend that under the repealed provision viz. 49(iii) of the Rules of 1930, punishment of reduction of "lowest stage in a time scale" was not limited in time, whereas the

Rules of 2005, which came into force with effect from 12.07.2005, the same punishment is prescribed under Rule 14 (vii), but is circumscribed by limitation in time. It is his specific case that memo of charges was served upon the appellant, on 29.10.2005 and, therefore, the departmental proceeding was required to be held under the Rules of 2005, which had already come into force with effect from 12.07.2005.

7. Repelling the contentions made by the respondent, State of Bihar, that the disciplinary action was rightly initiated against the appellant under the previous Rules of 1930 since the preliminary enquiry was held, leading to framing of the charges of the departmental enquiry, prior to coming into force of the Rules of 2005, Mr. Mauli would contend that preliminary inquiries, if any, were not held under statutory provisions embodied in the Rules of 1930. He has further contended that in no event, the disciplinary authority could have taken decision of non-payment of salary for the period of suspension over and above the subsistence allowance as a measure of punishment and none of the Rules, i.e. Rules of 1930 or the Rules of 2005, prescribe for or contemplate such action as a measure of punishment.

8. He would also submit that the second show cause notice, served upon the appellant after the Inquiry Officer had held the charges framed against the appellant, cannot be treated to be notes of disagreement in true sense of the term, the same being cryptic in nature, without giving the details as to how the charge, according to him, could be said to have been proved on the basis of records of the disciplinary proceeding.

9. Mr. Raza Ahmad, learned Additional Advocate General No. 9, appearing on behalf of the Respondent State of Bihar, on the other hand, would submit that there is no illegality in the disciplinary action taken against the appellant. He has contended that as per charge framed against him in the departmental enquiry, he was found to have violated the financial rules/provisions in giving direction for providing advance for construction work without making prior entry into the measurement book, to make payment to the executing agent, i.e. Block Statistical Supervisor. Further, without ascertaining the quality of work done by the said executing agent, he had directed for payment of Rs. one lac by way of advance. Flouting the statutory financial rules, which constituted gross misconduct, the disciplinary authority rightly imposed, upon the appellant, the said punishment, he contends. He has also submitted that the plea of the appellant that action could not have been taken under the repealed rules is not tenable and mere mentioning of the Rule 55 of the Rules of 1930 at the time of initiation of departmental proceeding or imposition of punishment would not invalidate the disciplinary action taken against the appellant. Mr. Raza, has also attempted to persuade us that the charge against the appellant was framed prior to coming into force of the Rules of 2005.

10. We have perused the materials on record. We do not find any material, which can indicate that the charge against the appellant was framed prior to coming

into force of 2005 Rules. The charge-sheet has been brought on record by way of Annexure-1 to the writ application, which is dated 29.10.2005. In the office order, dated 29.10.2005, the disciplinary proceeding against the appellant was sought to be held under Rule 55 of Rules of 1930, which stood, admittedly, repealed with effect from coming into force of 2005 Rules, i.e., 12.07.2005. However, we are not inclined to accept the submission made on behalf of the appellant that the entire departmental proceeding should be held to be vitiated on the ground of mentioning of incorrect provision of law. In our opinion, departmental action could be said to have been initiated if it could be shown that it was in violation of the mandatory requirements as contemplated under the extant Rules of 2005.

11. However, we find force in the submission made by Mr. Mrigank Mauli, learned counsel, appearing on behalf of the appellant, that the punishments as imposed upon him, by the impugned order, dated 14.10.2006, are not contemplated under the provisions as embodied in the Rules of 2005. Rule 14 of Rules of 2005 prescribes the following penalties, which can be imposed upon a Government servant:-

"14. Minor and Major Penalties.- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

Minor Penalties:-

- (i) censure;
- (ii) withholding of promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iv) reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect;
- (v) Withholding of increments of pay without cumulative effect.

Major Penalties:-

- (vi) Withholding of increments of pay with cumulative effect.
- (vii) Save as provided for in clause (iv), reduction to a lower stage in time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay"
- (viii) Reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he or she was reduced, with or without further directions regarding conditions of restoration to the grade or post or

service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(ix) Compulsory retirement;

(x) Removal from service which shall not be a disqualification for future employment under the Government;

(xi) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (x) or clause (xi) shall be imposed:

Provided further that in any exceptional case and for special reasons to be recorded in writing, any other penalty may be imposed."

12. Upon careful reading of Rule 14(iv) of Rules 2005, it would transpire that reduction to a lower scale in the time scale of pay for a period not exceeding three years, without cumulative effect, can be imposed upon a Government servant, which is a minor penalty. Rule 14 (vii) of the said Rules 2005 prescribes penalty of reduction to a lower stage in the time scale of pay for a specified period, with further direction as to whether or not he would earn increments of pay during such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay; save as provided for under Rule 14(iv), as a major punishment.

13. In the present case, punishment of reduction to lowest stage in time scale of pay without specifying any period as contemplated under Rule 14(vii) of the Rules of 2005 has been passed, which is not provided under the Rules of 2005. Further, though it is within the jurisdiction of the competent authority to make specific order as regards pay and allowances to be paid to the Government servant for the period during which he remained under suspension, a separate order is required to be made, in this regard, under Rule 97 of the Bihar Service Code.

14. In view of the above, the order, imposing punishment upon the appellant, dated 14.10.2006, (Annexure-3) and subsequent order, dated 07.03.2007, rejecting a representation, made by the appellant against imposition of punishment, requires interference.

15. We, accordingly, set aside the said orders, dated 14.10.2006, and 07.03.2007. The matter stands remanded back to the disciplinary authority/respondents to take a decision afresh on the question of imposition of punishment in terms of Rule 14 of the Rules of 2005. The competent authority shall retain liberty to press for a separate order in terms of Rule 97 of the Bihar Service Code on the question of payment to the appellant for the period during

which he had remained under suspension.

16. The orders, under appeal, passed by a learned single Judge, are, accordingly, set aside.

17. In the result, these appeals are partly allowed with the direction, aforesaid but without any costs.

I.A. Ansari, Actg. C.J.

I agree.