
(2011) 03 PAT CK 0026
In the Patna High Court
Case No : CWJC No. 9810 of 2003

Ram Awadhesh Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43

Citation : (2011) 59 BLJR 2701 : (2011) 2 PLJR 1125

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard learned Counsel for the Petitioner and the counsel appearing for the State.

2. This is the fourth round that the Petitioner has come before this Court in respect to a Departmental Proceeding, which was initiated against him while he was still in service, but subsequently, concluded after his superannuation under Rule 43(b) of the Bihar Pension Rules.

3. Earlier, Petitioner has moved before this Court in C.W.J.C. No. 5808 of 1995 for quashing of an order of suspension, issued by the Additional Secretary, Water Resources (Minor Irrigation Department), State of Bihar. The suspension order had been issued against the Petitioner in contemplation of a Departmental Proceeding. The Writ Application was disposed of, directing the Respondents to conclude the Departmental Proceeding by 31st December, 1995. In case, the proceeding is not concluded by that date, suspension order shall stand vacated since 1st January, 1996. As usual, the Departmental Proceeding was not concluded by 31st of December, 1995 and the Petitioner, who was working as Engineer in the Minor Irrigation Department of Bihar, superannuated on 31st of January, 1997. The Departmental Proceeding was converted into a proceeding under Rule 43(b) of the Bihar Pension Rules and concluded awarding punishment

of withholding of 100 per cent of pension and gratuity. This order was challenged by the Petitioner in C.W.J.C. No. 1757 of 1998*, on two grounds. First, the order of punishment, passed in a Departmental Proceeding, initiated under Civil Services (Classification, Control and Appeal) Rules, 1930, but, finally, concluded under Rule 43(b) of the Bihar Pension Rules, after superannuation of the delinquent with regard to an event, which took place more than four years prior to the date of retirement, was illegal, such proceeding was not maintainable. Another ground for challenging the impugned order of punishment was that the enquiry had been conducted in violation of Rules of Natural Justice. Petitioner was not pro-vided any opportunity to defend his case. Despite his repeated request, documents were not supplied to him. He was merely asked to look into the documents without giving reference of evidences. The enquiry report was submitted by the Conducting Officer, which was based on no evidence. An order of punishment, passed on the basis of such enquiry report, was illegal, arbitrary and fit to be quashed. The Hon"ble Single Judge has discussed about the illegality of Departmental Proceeding at page 14 of the Judgment. In the middle of this page, it is disclosed as follows:

At paras-26, 27, 28 and 33 of writ petition, the Petitioner has specifically stated that he requested to supply the relevant evidences and the list of witnesses but the Respondents neither supplied the list of documents, nor list of witness on him. The Petitioner was merely asked to look into the documents, without giving reference of evidences. Only the supervision note of the police authority was served and no other document in spite of revocation of order of suspension in view of Court"s order, the Petitioner was treated under suspension. These facts have not been disputed by the Respondents.

Annexure-6, a resolution dated 23.3.1993 is the charge-sheet containing five imputation of charges; only one document i.e. extract of report submitted by the S.P., Nalanda cited as prosecution evidence. No other document, nor name of any witness, has been shown therein as prosecution employee/ witness.

From the enquiry report, it will be evident that the same is not based on any evidence. The enquiry officer has not cited any evidence, nor statement of any witness to bring home the charges. Merely giving extract of charge; gist of show-cause reply submitted by Petitioner, given a finding of his own, not based on any evidence.

Thereby, it will be evident that the enquiry was conducted in violation of rules of natural justice and the enquiry report is not based on evidence.

In the aforesaid background, no punitive order could have been passed against the Petitioner" on the basis of such enquiry and enquiry report.

4. The Writ Application was allowed and the Respondents were directed to make payment of full pension and gratuity to the Petitioner within the stipulated time. In case of any delay in payment within the time specified, the penal interest at the rate of 10 per cent of such admitted dues were directed to be calculated and

paid to the Petitioner. This order was challenged by the State by filing L.P.A. No. 1172 of 2000. The LPA was partially allowed, so far maintainability of Departmental Proceeding under Rule 43(b) is concerned, it was discussed. The other finding, whereby the punishment order has been quashed, as departmental enquiry was conducted in violation of Rules of Natural Justice, as well as on the basis of a faulty enquiry report, was upheld. This has been discussed in paras 13 and 14 of the Judgment, which is as under:

13. The learned Single Judge has considered the question as to whether the inquiry, on the basis of which an order has been passed, has been conducted in violation of the principles of proceeding was not conducted consistent with the requirement of natural justice. The learned Counsel for the Appellant-State did not bring to the notice of the Court any material to show that the finding arrived at by the learned Single Judge on the said ground is against the material on the record. Accordingly, though the main ground given by the learned Single Judge for quashing the impugned order is held to be impermissible in law, the order passed by him quashing impugned order is upheld on the second ground that the order was in violation of the principles of natural justice.

14. The next question as to what should be done after quashing the impugned orders. The material on the record shows that there are grave allegation of misconduct involving several lacs of rupees against the Respondent and in such a situation it will not be proper to terminate the proceeding against the Respondent by quashing the impugned orders. In my view, the matter has to be remitted to the State Government and after giving a full opportunity of hearing, the matter has to be decided afresh.

5. By recording a finding in para 14 of the Judgment, passed in the said LPA, the matter was remitted to the State Government and a specific direction was issued that after giving full opportunity of hearing the matter has to be decided afresh. The Respondent Authorities continued with the Departmental Proceeding on the basis of same enquiry report, which had already been condemned in the Writ Application by the Single Judge and affirmed by the Division Bench in L.P.A. No. 1172 of 2000.

6. Specific finding was recorded against the enquiry report that it is based on no evidence and it has been prepared without giving any opportunity to the Petitioner to look into the documents and without affording him any opportunity to put his defence in the Departmental Proceeding. The Departmental Proceeding again ended in awarding same punishment to the Petitioner, which was earlier quashed. Again, the Petitioner's full pension and gratuity has been withheld and the same order is being challenged in the present Writ Application.

7. Counsel appearing for the Petitioner has submitted that the finding, which was recorded in the earlier Writ Application is fully applicable in the present Writ Application. On the basis of same enquiry report, the Petitioner has again been awarded same punishment, which was quashed by the Writ Court and affirmed

by the LPA Bench.

8. In the Counter Affidavit, filed on behalf of the Respondents, there is no denial to this statement. The counsel, appearing for the State has no instruction so far any other enquiry report is concerned. He has stated that except the enquiry report, which is Annexure-10 to this Writ Application and which was also the enquiry report in earlier Writ Application, as per his knowledge, there is no other enquiry report. Presuming this that there might be any other enquiry report, if the same was not furnished upon to the Petitioner, subsequent to the remand order passed by the LPA, that enquiry report has no relevance.

9. I find that the Departmental Proceeding was conducted by the Respondent against the Petitioner half heartedly. They have conducted this Departmental Proceeding in a most illegal manner with full knowledge, for the reason best known to them. Whatever be the matter, but this is a fact that departmental enquiry was not conducted against the Petitioner following the rule and provision for holding any Departmental Proceeding against a Government employee. On the basis of such illegally conducted Departmental Proceeding, Petitioner's most valuable right of receiving pension, which he has earned on account of remaining in Government service for such a long time, could not have been taken away.

10. Accordingly, the order of punishment, dated 29.7.2003, contained in Memo No. 3809, issued under the signature of Deputy Secretary to the Government of India, Minor Irrigation Department, Government of Bihar, (Annexure-27) is quashed. This Writ Application is allowed. Respondents are directed to make payment of full arrears of pension and gratuity and other payments, for which the Petitioner is entitled on account of quashing of this order, within eight weeks from the date of production/communication of this Order.

11. In view of the aforesaid facts and circumstances, this Writ Application is allowed.