(2000) 12 PAT CK 0043

In the Patna High Court

Case No : C.W.J.C. No. 374 of 1999

Ram Krishna Mandal APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Citation : (2000) 12 PAT CK 0043

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Kailash Bihari Verma, for the Appellant; S.A. Hussain for the State and Mr. Subhash Prasad Singh for AG, Bihar, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—This writ petition is directed against the order dated 5.10.98 (Annexure 1) issued under the signature of the Additional Secretary, Department of Science and Technology, Govt. of Bihar, whereby a sum of Rs. 1,02,194.26p. is sought to be recovered from the petitioner, and he has also been deprived of the differential of salary for the period of suspension. The petitioner was an employee of the Bihar Government and had last served the Bhagalpur Engineering College, Bhagalpur, as Head Clerk-cum-Accountan. It appears that the petitioner had engaged himself in acts of defalcation of the government funds and was, therefore, placed under suspension by order dated 29.7.77. By order bearing memo no. 227, dt. 17.1.87 (Annexure 8), his suspension was revoked with effect from 17.1.87. In other words, the petitioner was placed under suspension from 29.7.77 to 16.1.87. The petitioner was subjected to departmental proceedings and was dismissed from service by office order no. 4291, dt. 16.12.82 (Annexure 7). The petitioner does not seem to have a regular appeal against the order of dismissal. It appears to me from a perusal of the records that on account of some intervening factor, his belated representation was treated as appeal which was disposed by the said order bearing memo no. 227, dt. 17.1.87 (Annexure 8), whereby the order of dismissal (Annexure 7) was set aside and was substituted by a much lesser punishment. The suspension against him was revoked with effect from 17.1.87, and it was ordered that he shall not be entitled to anything beyond the subsistence allowance for the period of suspension which would, however, be subject to audit objections as well as the decision of the court with respect to the trial pending against the petitioner for defalcation of the amount in question. It may incidentally be mentioned that an F.I.R. had also been lodged against the petitioner and others for defalcation of the amount in question. The petitioner along with one more was charge-sheeted and was sent up for trial. He was, however, acquitted by judgment dated 23.8.94, passed by Sri Girija Nandan Prasad Azad, SDJM in GR Case No. 1639 of 1977/Tr. No. 48 of 1994 (State of Bihar vs. Ram Krishna Mandal & Anr.). A copy of the said judgment is marked Annexure 6 to this writ petition. I am informed at the bar that the same was not challenged before higher court and became final.

2. The petitioner had earlier moved this Court by preferring C.W.J.C. No. 2684 of 1998 for payment of his retirement benefits which was disposed of by a learned Single Judge of this Court by order dated 4.8.98 (Annexure 2), whereby the Director, Department of Science & Technology, Govt. of Bihar, Patna, was directed to dispose of the pending representation of the petitioner with a speaking order. Consequently, the respondent authorities have passed the impugned order bearing memo no. 1983, dt. 5.10.98 (Annexure 1), whereby the petitioner has been deprived of the differential of salary for the period of suspension, and a sum of Rs. 1,02,194.26p. has been directed to be recovered from him being the amount of defalcation.

3. While assailing the validity of the impugned order, learned counsel for the petitioner has advanced two-fold submissions. He submits that in view of the aforesaid order dated 17.1.87 (Annexure 8), whereby the order of dismissal was set aside, it follows as a matter of natural corollary that the period of suspension comes to an end. In his submission, therefore, he is entitled to the differential of salary for the period of suspension. Learned counsel next submits that the quantification of the amount sought to be recovered from the petitioner is unjust and inflated.

4. Mr. Alamdar Hussain, learned SC VI, has countered both the submissions.

5. Having considered the rival submissions, I am of the view that this writ petition has to be dismissed. Learned Standing Counsel is right in his submission that it is manifest from a plain reading of the aforesaid order dated 17.1.87 (Annexure 8), that it is correct to state that order of dismissal had been set aside, but was substituted by a much lesser punishment of deprivation of the differential of salary for the period of suspension. The suspension was lifted with effect from 17.1.87, i.e. prospectively. Secondly, the order clearly stated that the question of payment of differential of salary for the period of suspension may be considered subject to the audit objections/report. It is manifest that the audit report was entirely against the petitioner and, therefore, there is no question of payment of the differential of salary for the period of suspension. The first

contention is, therefore, rejected.

. This takes me on the second contention advanced on behalf of the petitioner. Learned counsel for the petitioner submits that quantification of the amount defalcated by him, namely, Rs. 1,02,194.26p. seems to be without any basis and unjust. However, learned Standing Counsel has rightly submitted that the primary onus was on the petitioner to discredit the audit report which has not been done anywhere in writ petition. The audit report became final and, there is no material before this Court to discredit the same. In fact, except the contention advanced during the course of oral arguments, there is no averment in the writ petition challenging the quantification. The contention is, therefore, rejected.

7. Before I part with this judgment, I must record my appreciation of the valuable assistance rendered by Mr. Alamdar Hussain, learned Standing Counsel No. VI. In the result, this writ petition is dismissed. The impugned order dated 5.10.96 (Annexure 1) is hereby upheld.

