

(2011) 05 PAT CK 0074

In the Patna High Court

Case No : Letters Patent Appeal No. 721 of 2010

Ram Sagar Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Bihar Service Rules, 1952 — Rule 100, 96, 97(2), 99
Criminal Procedure Code, 1973 (CrPC) — Section 321
Penal Code, 1860 (IPC) — Section 302, 321

Citation : (2011) 59 BLJR 3115

Hon'ble Judges : Sudhir Kumar Katriar, J; Samarendra Pratap Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sudhir Kumar Katriar, J.—This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna has been preferred by the Petitioner of CWJC No. 3026 of 2005, and raises a grievance with respect to the order dated 23.2.2010, passed by a learned single Judge of this Court, whereby he has upheld the order dated 3.1.2006, passed by the Director, Primary Education, in purported exercise of powers Under Rules 99 and 100 of the Bihar Service Code (hereinafter referred to as "the Code"), whereby the period 17.11.70 to 20.6.75, the period during which the Appellant was unauthorizedly absent, as period of deemed suspension, but has refused to grant full salary for the period. This appeal is further directed against the order dated 25.1.2010, passed by the Director, Primary Education, being consequential in nature, whereby it has been directed that the Appellant shall be entitled to subsistence allowance for the period in question because the Appellant did not discharge any official duties during that period.

2. A brief statement of facts essential for the disposal of this appeal may be indicated. The Appellant was althrough employee of the Bihar Government, in the Department of Education. A first information report was lodged against him and

others on 15.11.70, inter alia, making allegations u/s 302, IPC. He absented himself continuously from 17.11.70. He was arrested on 13.4.74, and was released on bail on 13.9.74. He reported for duties on 14.9.74, but was perhaps not allowed to join. He was placed under spension with effect from 21.6.75. The prosecution filed an suspension with effect from 21.6.75. The prosecution filed an application u/s 321, Code of Criminal Procedure in Sessions Trial No. 198/1977, seeking permission to withdraw the sessions trial. By his order dated 16.2.79, the learned Additional Sessions Judge II, Muzaffarpur, allowed the application and permitted withdrawal of the criminal case. By order dated 31.8.79, of the State Government, the order of suspension was revoked. The Petitioner superannuated from the services of the Bihar Government with effect from 31.8.1983.

2.1. The Petitioner filed the present CWJC No. 3026 of 2005, seeking release of salary, post-retirement benefits, with interest. By order dt. 24.10.83, it was directed that the Petitioner may be paid fully salary for the period 21.6.75 to 31.8.79, but payment was released by cheque dt. 8.7.2005. Release of the post-retirement benefits admissible to the Appellant has also been released with hiccups. The question of payment of salary for the period 17.11.70 to 20.6.75, was considered in the writ proceeding. It was observed in the order dated 31.8.2005, passed by the learned single Judge on the writ petition, that the Petitioner is entitled to salary for the period 17.11.70 to 20.6.75, and accordingly directed the Director of Primary Education to pass a reasoned order. In compliance of the order of this Court, the Director, Primary Education, passed order dated 3.1.2006, whereby the period in question has been treated to be under deemed suspension under the provisions of Rule 97(2), directed for payment of salary accordingly, and impugned herein. This was followed by the order dated 25.1.2010, being consequential in nature, passed by the Director, Primary Education, whereby it has been directed in specific terms that the Appellant shall be entitled to subsistence allowance for the period in question, and impugned herein.

3. Learned Counsel for the Appellant submits that, in view of the provisions of rules 99 and 100 of the Code, the Respondent authorities were obliged in law to place him under suspension forthwith after 15.11.70, in which case the Appellant would have been entitled to the benefit of payment of full salary because of the subsequent withdrawal of the criminal case. He also raises a grievance that, in view of the lapses on the part of the Respondent authorities, payment of salary and post-retirement benefits got unduly delayed. He should, therefore, be compensated with adequate interest.

4. Learned Government Counsel has found error with the order dated 31.8.2005, passed by the learned single Judge in the writ proceeding, and the consequent orders of the Director impugned herein.

5. We have perused the materials on record and considered the submissions of the learned Counsel for the parties. We are mindful of the position that a large

number of persons in this State are falsely implicated in criminal cases in which situation the person so found to be falsely implicated should not be allowed to suffer to the extent the State Government, or for that matter this Court, can redress his grievance. We are equally mindful of the order dated 16.2.79, passed by the learned Additional Sessions Judge II, Muzaffarpur, permitting withdrawal of the sessions trial. It is not clear from the order dated 16.2.79, as to under what circumstances the State Government filed the application for withdrawal except a very vague generalisation in the order that "...the ground for withdrawal as given in the petition and as submitted by the learned Spl. P.P. is that credible information has been received by the State according to which prosecution of the case has become inexpedient and it is also desirable to withdraw the case for reasons of the State." Thus far so good.

6. To our mind, the primary question for consideration in this case is the validity of the order dated 31.8.2005, passed by the learned single Judge, and the consequential orders dated 3.1.2006 and 25.1.2010 of the Director, Primary Education, whereby the period in question has been treated to be period of deemed suspension with the direction to make payment of subsistence allowance for the period in terms of Rules 99 and 100 of the Code. Every case on its own facts. The FIR was instituted against the Appellant, and five others (not before us), on 15.11.70. He absented himself from duties from 17.11.70 till 13.9.74, the date on which he was released on bail, without any information to the authorities, let alone the question of seeking prior permission to be on leave. He claims to have reported for duties on 14.9.74, was not allowed to join that day, and had ultimately joined on 20.6.75. This chronology of events constitutes the period in question. On a thoughtful consideration of the matter, we are of the view that, after the FIR was lodged, the Appellant absconded, did not report for duties for a long length of time, did not submit to the jurisdiction of the Court, and the long arm of law ultimately reached him on 13.4.74, when he was arrested. Law is well settled that a person who has no respect for law and the established procedure, and refuses to submit to the jurisdiction of the Court, cannot be heard in discretionary, prerogative writ jurisdiction. Had he submitted to the jurisdiction of the Court soon after the FIR was instituted, this Court would have taken to him kindly and could have considered his prayer sympathetically. There is also no material on record to suggest that, after institution of the FIR, he made any effort to inform the authorities of the criminal action against him and to obtain prior sanction for leave. We have not the slightest manner of doubt that the Appellant acted irresponsibly during the period in question.

7. Rules 99 and 100 of the Code are reproduced hereinbelow:

99. A Servant of Government against whom proceedings have been taken either for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any

subsistence grant that may be granted in accordance with principles laid down in Rule 96) for such periods, until the termination of the proceedings taken against him or until he is released from detention and allowed to rejoin his duties as the case may be. An adjustment of his allowances for such period therefore, be made according to the circumstances of the case, the full amount being only in the event of the Government servant being acquitted of blame or (if the proceeding taken against him, were for his arrest for debt) of its being proved that the Government servant's liability arose from circumstances beyond his control or detention, being held by any competent authority to be unjustified.

100. A Government servant against whom a criminal charge or a proceeding for arrest for debt is pending should also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisoned (e.g. while released on bail) if the charge made or proceeding against him is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as such or involves moral turpitude. In regard to his pay and allowance, the provisions of Rule 99 shall apply.

It is evident on a plain reading of these two provisions of law that the factual situation found hereinabove is not covered by the provisions of Rules 99 and 100. In such a situation, we are equally in no doubt that the learned single Judge erred in passing the aforesaid order dated 31.8.2005, and practically issued a mandamus to the Director, Primary Education, in the teeth of the provisions of Rules 99 and 100 of the Code. Moreover, the order of the learned single Judge strictly speaking is beyond the frame of the writ petition, the relief with respect to the period in question not having been prayed for. We entirely disagree with the learned single Judge. Consequentially, the impugned orders dated 3.1.2006, and 25.1.2010, fall to the ground. Admittedly, and has also been noted in the impugned order dated 25.1.2010, that the Appellant did not do any work at all during the period in question. Therefore, he shall not be entitled to any payment at all for the period in question.

8. In view of the Appellant's conduct, the second prayer has also to be negatived. The evil consequences flowed to him because of his conduct during the period in question, when he had absconded and refused to report for duties. In such a situation, the delay in payments to the Appellant is entirely attributable to him. This Court in exercise of its discretionary, prerogative writ jurisdiction shall never come to his aid. We are mindful of the principle of law that no Appellant can be worse off than the impugned order. In our view, this principle of law does not apply to the discretionary, prerogative writ jurisdiction, where justice is the paramount consideration. Has it to be emphasized that justice is equally meant for both sides. The present case is one where the Respondents need justice. Any direction for payment for the period in question will be supporting a wrong case, and would render administration very difficult. We wish to repeat that the position may have been different for the Appellant, had he

subjected himself to the jurisdiction of the Court, and the procedure established by law, and informed the authorities of the reason for absence, soon after the FIR was lodged. The Appellant abysmally failed in this regard and is, therefore, not entitled to be heard in writ jurisdiction.

9. In the result, this appeal is dismissed. We disagree with the order dated 31.8.2005, passed by the learned single Judge in CWJC No. 3026 of 2005. Consequently, the orders dated 3.1.2006, and 25.1.2010, both passed by the Director, Primary Education, are hereby set aside. In the circumstances of the case, there shall be no order as to cost.

10. In view of the valuable assistance rendered by Mr. Piyush Lal, learned Counsel for the Appellant, let the Patna High Court Legal Services Committee pay to him a sum of Rs. 10,000/- (ten thousand). Let a copy of this judgment be handed over to Mr. Piyush Lal, Advocate.

Samarendra Pratap Singh, J.

11. I agree.