
(2006) 11 PAT CK 0115

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5224 of 2002

Ram Yatan Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-11-2006

Acts Referred:

Citation : (2006) 11 PAT CK 0115

Final Decision : Dismissed

Judgement

Sudhir Kumar Katriar, J.—Heard Mr. Awadhesh Kumar Mishra for the petitioner, and Mr. Rajesh Kumar Singh, learned Junior Counsel to AAG II. This writ petition has been preferred for issuance of a writ of certiorari to quash order No. 257, dated 16.3.2002 (Annexure 15), of the Government of Bihar in the Department of Personnel & Administrative Reforms, issued under the signature of Deputy Secretary of the Department, whereby the petitioner's pension to the extent of 100% has been withheld.

2. According to the writ petition, the petitioner was at the relevant time posted as Registrar in the Department of Excise, and subsequently as Under Secretary in the Department of Minor Irrigation, Govt. of Bihar. He was the Drawing & Disbursing Officer at both the places. On account of huge withdrawals in unauthorised manner during his two postings, the appropriate authority had directed the petitioner to lodge a report prepared by it with the Cabinet (Vigilance) Department, prepared by the appropriate authority and submitted under the petitioners's signature, wherein he was named as an accused. He was thereafter placed under suspension by order dated 2.9.96, in view of initiation of departmental proceedings. He was served with two charge-sheets. The first one was for alleged acts of omission and commission in the Excise Department, a photocopy of which is part of Annexure-5. The second charge-sheet was issued with respect to the affairs of the Department of Minor Irrigation, a photocopy of which is marked Annexure-9A to the writ petition. With respect to Annexure-5, the petitioner had submitted his show-cause before the learned Enquiry Officer

on 19.9.97 (Annexure 6). His show-cause with respect to Annexure 9A was submitted similarly before the learned Enquiry Officer on 18.5.99 (Annexure 10). He denied the charges. The Enquiry Officer submitted his joint enquiry report dated 22.7.99 (Annexure 11), whereby he has held that the Department has not been able to prove anyone of the charges. It appears that the learned disciplinary authority set aside the enquiry report and ordered for a De Novo enquiry by a different enquiry officer. Accordingly, a fresh enquiry was conducted wherein the petitioner participated. The Enquiry Officer submitted the fresh report dated 5.9.2001 (Annexure 13A), wherein he found that the Department had been able to prove most of the charges.

2.1) It is relevant to state that the petitioner had in the meanwhile filed a contempt application in this Court bearing MJC No. 1977 of 1999, alleging disobedience of an earlier order of this Court to conclude the departmental proceeding within a specified period. The State Government had filed IA No. 342 of 2000 in the contempt proceeding for extension of time to conclude the departmental proceeding. By order dated 20.2.2002 (Annexure -12), the same was directed to be put up again on 18.3.2002, and the learned Government Counsel was directed to inform the Court on the next occasion whether or not the departmental proceeding had been concluded failing which the Secretary, Department of Personnel & Administrative Reforms, was to be personally present in Court to show cause why a proceeding of contempt be not initiated against him for repeated and wilful disobedience of this Court's direction.

2.2) This was followed by the second show-cause notice dated 6.3.2002 (Annexure 13), calling upon the petitioner to show cause on or before 11.3.2002, as to why punishment to withhold pension to the extent of 100% be not passed. Instead of submitting his reply to the same, the petitioner filed an application dt. 9.3.2002 (Annexure-14) before the Department of Personnel and Administrative Reforms to grant him three weeks time to submit his reply. It appears that the time was not extended and the impugned order was passed.

3. While assailing the validity of the departmental proceeding, learned Counsel for the petitioner submits that it was not open to the authorities to order for De Novo enquiry with the intention to obtain a favourable report. He relies on the judgment of the Supreme Court in *K.R. Deb Vs. The Collector of Central Excise, Shillong*. He next submits that opinion of the learned Advocate General was obtained in the matter which was in favour of the petitioner and was overlooked by the disciplinary authority. He also submits that the Bihar Public Service Commission was not consulted before the final order was passed which is in violation of proviso (c) to Rule 43B of the Bihar Pension Rules, 1950. He next submits that the impugned order was passed in haste. Adequate opportunity was not afforded to the petitioner to submit his reply to the second show-cause notice and is afflicted by bias and prejudice, inasmuch as the intention was to meet the deadline in the contempt proceeding. He lastly submits that the impugned order has not been passed by the appropriate authority.

4. Learned Govt. counsel has opposed the writ petition. He first of all submits that a De Novo enquiry was permissible in law. There was adequate justification to set aside the first enquiry report, and order for a De Novo enquiry. He submits that the judgment of the Supreme Court in K.R. Deb v. Collector, Central Excise, Shillong (supra) has been explained and distinguished in its judgment in the case of Union of India and Others Vs. P. Thayagarajan, He next submits that the opinion of learned Advocate General, if any, was wholly irrelevant in the present context. He next submits that the petitioner has nowhere pleaded in the writ petition as to non-compliance of proviso (c) to Rule 43B of the Bihar Pension Rules. He also submits that proviso (c) to Rule 43B is not mandatory in nature. He relies on the judgment of a learned single judge of this Court in the case of Shambhu Nath Bhagat Vs. The State of Bihar and Others, He also submits that adequate time and opportunity was given to the petitioner to submit his reply to the show-cause. The respondent authorities were bound by the orders of this Court and in due deference to it, sincere attempt had to be made to conclude the departmental proceeding before 18.3.2002. He lastly submits that the impugned order has been passed by the appropriate authority.

5. I have perused the materials on record and considered the submissions of learned Counsel for the parties. On a plain reading of the enquiry report, it appears to me that there was adequate justification to set aside the first enquiry report and order for De Novo enquiry. The Department of Cabinet (Vigilance) had seized all the relevant documents from the two departments for the purpose of investigation in the aforesaid criminal case. Learned enquiry officer has noted in the enquiry report about the difficulties faced by him because of non-production of documents and such other reasons. The relevant portions of the first enquiry report are set out hereinbelow for the facility of quick reference:

ijUrq fuxjkuh vUos"k.k C;wjks ls vusdksa frfWfk;kW fu/kkZfjr djus ds i"pkr Hkh ewy vfHkys[k izkIr ugha gks lds A vr% ck/; gksdj 11+-5-99 dks mRikn ,oa e| fu"ks/k foHkkx dh xokgh dh can fd;k x;k A

pwWfd vkoaVu ls vf/kd fudklh ls lacf/kr ewy foi+= eq>s miyC/k ughs dj, x, vr% ;g tkap dj ikuk laHko ugha gqvkd fd mudh fudklh fduds +}kjk dh xbZ vkSj og fudklh okLro esa vkjksfir inkf/kkdkjh +Jh jke;ru izlkn ds }kjk dh xbZ vFkok ugha A

vr% eq>s miyC/k dj, x, lk+{;ksa ds vkysd esa bl vkjksi ds lacU/k esa dksbZ Li"V earO; ns ikuk laHko ugha gS rFkk ijks{k +#i ls ;g ekuk tk ldrk gS fd dkxtkrksa ds vHkko esa ;g vkjksi iw.kZ#is.k Jh izlkn ds fo#) lkfcr ugha gks ldk gS A

pwWfd dksbZ ewy iath vFkok foi+= bl vkjksi ds leFkZu esa esjs le{k izLrqr ugha fd, tk lds vr% bl vkjksi dks izekf.kr ekuus ds fy, dksbZ vk/kkj Li"V ugha gksrk gS A

The two departments cannot be blamed for non-production of the relevant documents because the same had been seized by the investigating agency. It is

thus manifest on the face of it that it was a half-baked enquiry because of non-availability of a large number of documents and, in view of the enormity and the seriousness of the allegations, the State Government had rightly taken the decision to set aside the same and order for De Novo enquiry.

6. I must deal with the judgment of the Supreme Court in the case of K.R. Deb (supra), on which reliance has been placed by the learned Counsel for the petitioner, paragraph 13 of which seems; to support the petitioner's case, and is set: out hereinbelow for the facility of quick reference:

13. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record a further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

However, learned Govt. counsel is right in his submission that the same was explained and distinguished by the Supreme Court in Union of India v. P. Thayagarajan (supra). After quoting the aforesaid portion of the earlier judgment, the Supreme Court observed as follows in paragraph 9 of the later judgment:

9. The reasoning adopted by the Division Bench of the High Court was plainly incorrect. Whatever may be the powers of the appellate authority, the disciplinary authority will have to be satisfied with the procedure adopted by the enquiry officer before passing an order. It does not stand to logic that in a given case, the appellate authority could order a fresh enquiry and not the disciplinary authority at whose instance the enquiry began and which is not satisfied with the enquiry held for some vital defects in the procedure adopted. Therefore the order made by the High Court cannot be sustained. The same stands set aside and we allow the appeal and dismissed the writ petition filed by the respondent.

7. I, therefore, conclude that the State Government was fully justified in setting aside the first enquiry report and there was no legal impediment in ordering for a De Novo enquiry.

8. Learned government counsel is right in his submission that the opinion of the learned Advocate General is wholly irrelevant in the Present context, and cannot be allowed to influence the departmental proceeding which is quasi - judicial in nature. The contention is, therefore, rejected.

9. As to the petitioner's contention about the alleged non-compliance of proviso (c) to Rule 43(B) of the Rules, it provides that "the Bihar Public Service

Commission shall be consulted before final orders passed." Learned Govt. counsel is right in his submission that the requisite factual foundation has not been laid in the writ petition. Therefore, the same could not and has not been answered in the counter affidavit. The contention is, therefore, rejected.

9.1) Proviso (c) to Rule 43B is not mandatory in nature, and its non-compliance does not vitiate the impugned punishment. In view of the discussion in the judgment of this Court in the case of Shambhu Nath Bhagat v. State of Bihar (supra), I am relieved of the responsibility of discussing the issue in details. Relying on the judgment of the Supreme Court in the case of State of U.P. Vs. Manbodhan Lal Srivastava, this Court held as follows in paragraph- 9 of the judgment:

9. In the instant case also, the power to impose punishment is vested in the Government under Rule 43(b) of the Rules and cannot be held to be, in any way, controlled by the provisions contained in Clause (c) which requires consultation with the Commission before passing of the final order as it does not provide for the contingency as to what is to happen in the event of non-compliance of the said requirement. It does not either in express terms or by implication provide that the result of which a non-compliance is to invalidate the proceedings ending with the final order of the Government. Under such circumstances, it is difficult to uphold the contention of the learned Counsel for the petitioner that the impugned order shall stand vitiated on account of non-compliance of the provisions contained in Clause (c) of proviso to Rule 43(b) of the Rules.

10. The petitioner's next contention that the impugned order was passed in haste, was afflicted by bias and prejudice because of the pendency of the contempt proceeding, deserves serious consideration. The petitioner had filed MJC No. 1977 of 1999, for initiation of contempt proceeding against the authorities for not concluding the departmental proceeding within the time granted by the court in the petitioner's previous writ petition. The order dated 20.2.2002 (Annexure 12), passed in MJC No. 1977 of 1999, is set out hereinbelow for the facility of quick reference:

The J.C. to SC VI presses IA No. 342 of 2002 which was filed on 17.1.2002 and wherein a prayer is made to extend the time allowed for concluding the departmental proceeding pending against the petitioner by two months. At this stage I am not inclined to pass any order on the prayer made in the I.A. and without passing any order on that petition this case is directed to be put up at the same position in the list on 18.3.2002.

On that date the State counsel will inform the court that the departmental proceeding pending against the petitioner has been concluded and a final order passed therein failing which the Secretary, Department of Personnel & Administrative Reforms will be personally present in court to show cause why a proceeding of contempt may not be initiated against him for repeated and wilful disobedience of this Court's direction.

Let a copy of this order be handed over to J.C. to SC VI.

10.1) It appears to me on a plain reading of the order that this Court in spirit and substance intended that the departmental proceeding be concluded before 18.3.2002, failing which contempt proceeding may be initiated against the authorities. The respondent authorities were, therefore, wholly justified in making serious endeavour to conclude the departmental proceeding before 18.3.2002. The second show-cause notice is dated 6.3.2002 (Annexure 13), calling upon the petitioner to submit his reply by 11.3.2002. In view of the order in the contempt proceeding, I am in no doubt that the petitioner was duty bound to assist the disciplinary authority in disposing of the matter before the date fixed by the Court, which was passed, in the proceeding initiated by him. Instead of co-operating in the matter, he submitted his application dated 9.3.2002 (Annexure 14) for extension of time by three weeks, perhaps with the intention to put them to trouble in the contempt proceeding. The petitioner seems to have acted contrary to the spirit of the order dated 20.2.2002. It is further relevant to state that this was after all a second show-cause notice which is not mandatory in nature. It was open to the learned disciplinary authority not to serve second show cause notice to the petitioner and proceed with imposition of punishment without the same. No provision of law or reported judgment has been brought to me notice on behalf of the petitioner to establish that the petitioner was entitled to a second show-cause notice as a matter of right.

10.2) The judgment of the Supreme Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, supports the case of the respondents. After a detailed discussion, the Supreme Court has held as follows in paragraph 68 (at page 1449), as follows:

68. ...In Associated Cement Companies Ltd. Vs. T.C. Shrivastava and Others, this Court held that "neither under the ordinary law nor under industrial law a second opportunity to show cause against the proposed punishment is necessary". Since a right to such opportunity does not exist in law, it follows that the only right which the government servant had to make a representation on the proposed penalty was to be found in Clause (2) of Article 311 prior to its amendment by the Constitution (Forty-second Amendment) Act. This right having been taken away by the Constitution (Forty-second Amendment) Act, there is no provision of law which a government servant can claim this right.

10.3) It is equally relevant to state that the findings had already been recorded in the enquiry report (Annexure 13A), and it was not open to the petitioner to challenge the same before the learned disciplinary authority. He could challenge the same before a superior forum. Secondly, the purpose of second show-cause notice is to submit a reply only on the quantum of punishment. The learned disciplinary authority had very fairly indicated the proposed punishment in the second show-cause notice. The respondent authorities had very fairly enclosed a copy of the enquiry report with the second show-cause notice. The position may perhaps have been different, had the copy of the enquiry report not been

enclosed. Three full days were surely available to submit his reply to the limited nature of the second show-cause notice. In my estimation, in the facts and circumstances of the case, this was adequate for the purpose.

10.4) I am, therefore, of the view that the impugned order was not passed in hot haste, was not afflicted by any kind of bias and prejudice on the part of the respondent authorities, was rather passed in due observance and obedience of the order of this Court in contempt proceeding. The contention is rejected.

11. I must deal with the last contention advanced on behalf of the petitioner that the impugned order has not been passed by the appointing authority. It appears to me on a plain reading of the impugned order that the order was passed by the State Government, being the appointing authority, and was only issued under the signature of the Deputy Secretary. The following portion of the impugned order is enough to reject the contention:

Jh jketru izlkn Isok fuo`Rr voj lfpo ds fo:) izfrosfnr vkjksiksa ds fo:) izekf.kr vkjksiksa dh izd`fr dh xaHkhjrk ds vkyksd esa jkT; ljdkj us fcgkj isa"ku fu;ekoyh ds fu;e&43 ?ch? ds rgr iznRr "kfDr;ksa dk iz;ksx djrs gq, Jh izlkn ds "kr&izfr"kr isa"ku lnk ds fy, vo:) djus dk fu.kZ; fy;k gSA

vr% jkT; ljdkj ds fu.kZ; ds vkyksd esa Jh jketru izlkn Isok fuo`Rr]voj lfpo]xzkeh.k fodkl foHkkx ds "kr&izfr"kr isa"ku lnk ds fy, vo:) fd;k tkrk gSA

12. In the result, I do not find any merit in the writ, petition. It is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.