

(2018) 02 PAT CK 0058

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 450 Of 2003

Ramjanam Singh

APPELLANT

Vs

State Of Bihar Through The Industrial And Ors

RESPONDENT

Date of Decision : 06-02-2018

Acts Referred:

Citation : (2018) 2 PLJR 537

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Amaresh Kumar Sinha, Prashant Kumar, B.K Shukla, P. Kumari, S.M. Shabbir Alam

Final Decision : Allowed

Judgement

1. Heard counsel for the petitioner and the Corporation.
2. The petitioner, who was receptionist in the Patna office of the Bihar State Credit and Investment Corporation Limited (herein after referred to as 'the BICICO'), has prayed for quashing Memo no. Esstt/3443, dated 28.3.2002 (Annexure 9), issued by the Managing Director of the BICICO by which he has been dismissed from the service with effect from 22.03.2002 in view of decision taken by the Board of Directors on 23.3.2002 bearing agenda no. 176/5. He also prays for quashing the order, dated 22.3.2002 vide memo no. Esstt/3300(Annexure 7) issued by the Managing Director of the BICICO, dismissing the petitioner with immediate effect subject to approval of the Board of Directors. The petitioner has also prayed for quashing the entire disciplinary proceeding, reinstating him in service with all consequential benefits and payment of subsistence allowance w.e.f. the date of suspension dated 25.9.2001.
3. The petitioner, while posted as receptionist in the office of the BICICO at Indira Bhawan, Boring Canal Road, Patna, was proceeded for allegedly beating a lady Class IV employee of the same office on 21.9.2001. In respect of the said allegation, a preliminary enquiry was conducted by Sri P.C.Dhar, Manager.

Statements of some persons, posted in the BICICO were recorded and preliminary enquiry report dated 24.9.2001, Annexure D to the counter affidavit filed by the BICICO was submitted. In the preliminary enquiry proceedings, some of the staff available in the office of the BICICO at the relevant time, were called upon to give their version of the incident. Amongst the said persons, R.D.Mistri, the Guard gave an account to the incident that on hearing the screaming of the victim lady he rushed to the spot where he saw one Ram Babu Yadav separating the petitioner from the said lady. Said Ram Babu Yadav was not available for his comments. One Manager Yadav has also given his statement supporting the incident.

4. On the basis of the preliminary enquiry which was a fact finding enquiry, decision was taken to hold a duly constituted departmental proceeding against the petitioner on the charge of having beaten the said lady.

5. Charge memo dated 25.9.2001 under the signature of the Managing Director of the BICICO (Annexure 3) came to be issued against the petitioner containing the charge that on 21.9.2001 he had physically assaulted the lady Class IV employee and committed inhuman and objectionable behaviour with her. One of the allegations was regarding unauthorized absence from the office. Said allegation has been made without giving the details of the period of unauthorized absence. The charge memo also alleges that the petitioner by committing such act has violated the atmosphere of discipline in the office. Surprisingly, P.C.Dhar, Manager who had submitted preliminary enquiry report dated 24.9.2001, which formed the basis of decision to draw a full fledged departmental proceeding in the matter, was made an Enquiry officer in the proceeding. The charge memo does not indicate any documentary evidence or any witness relying on which the department proposes to establish the charges against the petitioner. From perusal of the charge memo it is clear that no Presenting officer had been appointed to present the case on behalf of the BICICO.

6. The petitioner submitted his written statement on 12.2.2002 which is Annexure 6 of the writ petition. The petitioner has completely denied the occurrence. He has stated that in fact he was a victim and that in view of the indecent behaviour of the lady class IV employee he had also made some allegations against her. He also stated that he wanted to produce some witnesses in his support.

7. Bare perusal of Enquiry report reveals that that no one deposed in the enquiry proceeding, no copies of any documentary evidence was made available to the petitioner on which reliance was to be placed in the proceedings. Without observing the aforesaid requirement of a duly constituted proceedings and without even appointing any Presenting officer, the Enquiry officer who assumed the role of the Presenting officer has conducted the proceeding against the petitioner holding charges proved by relying upon some statements recorded in the preliminary enquiry which had been conducted prior to the issuance of charge memo dated 25.9.2001. Copies of the said statements were not made

available to petitioner. The Enquiry officer has also placed reliance upon the statements made in the preliminary enquiry by one Smt. Subani Karketta, typist cum clerk and Mrs. Daya Sinha in his enquiry report submitted to the Managing Director of the BICICO on 21.3.2002 (Annexure H of the counter affidavit) concluding as follows:-

"However Smt. Subani Karketta and Smt. Daya Sinha have confirmed their verbal statement about the incident in writing as well."

The enquiry report dated 21.3.2002 (Annexure H) has been drawn up wherein the service of the petitioner as receptionist has been dispensed with and he has been dismissed with immediate effect.

8. Counsel for the petitioner, with reference to the order dated 22.3.2002, i.e., the order of the Disciplinary authority, submits that reliance has been placed upon some past incidents which led to his suspension and dismissal earlier.

9. It appears that such reference has been made contrary to the records because when time bound promotion was withdrawn and petitioner had been dismissed from service, he had filed writ petition bearing C.W.J.C.Nos. 8000 and 9074 of 1989, and MJC No. 703 of 1989 and after conclusion of the proceedings, he had been reinstated in service after deducting three increments from his salary, which also was subsequently restored. Though the respondents have filed counter affidavit but in response they have offered no comment and the same has not been denied. It is also pointed out by counsel for the petitioner that the enquiry report also relies upon some reports submitted by the Helpline, a forum for protection of women. There is however nothing on record to show that the reports were ever made available to the petitioner. The same was also not a charge against him contained in the charge memo dated 25.9.2001.

10. The said conclusion of the Enquiry officer is without any basis. Smt. Daya Sinha, even in the preliminary enquiry conducted on 24.9.2001 was not available for enquiry, though she along with Mrs. Subhani Karketta, typist cum clerk was sitting in their seats in the office when the incident took place as is evident from perusal of the preliminary enquiry report dated 24.9.2001 (Annexure D). He further submits that reference has been made to the verbal statement of Smt. Subani Karketta during the earlier preliminary enquiry, but she did not appear before the Enquiry officer.

11. Order of punishment which has been issued by the office order dated 22.3.2002 bearing Memo no. 3300 has been issued without even giving a copy of the said enquiry report to the petitioner. The petitioner's counsel submits that this was a vital opportunity available with the petitioner which has been denied by the respondents. He submits that non-supply of a copy of the enquiry report before the same has been considered by the disciplinary authority and before the order of punishment has been recorded against him is a violation of the principle of natural justice and established principle of law as has been held in the case of The Managing Director Ecil Hyderabad Vs. B Karunakar Etc. reported in (1993) 4

SCC 727 and in case of Punjab National Bank and others Vs. Kunj Behari Misra, reported in (1998) 7 SCC 84.

12. Specific pleading to the effect that the enquiry report was not supplied to the petitioner has been made by the petitioner in paragraph 23 of the writ petition which has been addressed by the respondents in paragraph 27 of the counter affidavit. Respondents, while dealing with this assertion of the petitioner, have tried to justify non-supply of the enquiry report by placing reliance on 42nd amendment of the Constitution of India stating that the necessity of issuing a second show cause against a proposed punishment has been done away with and the non-issuance of 2nd show cause notice does not vitiate a departmental proceeding. Respondents further submitted that in the present case the petitioner was given second opportunity to defend himself before the Board of Directors, BICICO which after hearing him and going through his representation/ documents approved the office order dated 22.3.2002 of the Managing Director, BICICO. Counsel for the BICICO also submits that in the present case, only the statement of the victim herself is sufficient as it is the case of gross indiscipline. He also submits that the punishment is on the basis of the conclusion arrived at on a preponderance of the probability and in view of the aforesaid statements given by the member staff in course of the earlier preliminary enquiry. There is no infirmity with the punishment. Further, there was no specific demand of any document which have not been made available to the petitioner.

13. This Court would observe that once the respondents have taken a decision to subject the petitioner to a duly constituted departmental proceedings, then the same must be conducted in accordance with law and in conformity with the Principle of Natural Justice. There has to be some cogent and material evidence against the petitioner produced in the enquiry by a Presenting officer. Surprisingly, in the instant case there was no Presenting officer. Respondents could not have placed reliance on statements recorded and the findings arrived at in the preliminary fact finding enquiry. Respondents cannot be permitted to conduct the proceedings in such a slipshod manner without considering that consequence, as grave as dismissal from the service were being recorded against the petitioner. The admitted position that emerges from the record is that Enquiry officer was performing the role of a Presenting officer. Even copy of enquiry report was not made available to the petitioner.

14. From the aforesaid, it is evident that the proceedings were conducted against the petitioner in gross violation of principles of Natural justice and fair play inasmuch as reliance has been placed on statements which were not made in the departmental enquiry, but had been made in the fact finding preliminary enquiry. The witnesses had not supported the said statements in the departmental proceedings. Thus there was no evidence on record so as to sustain the charges against the petitioner. The proceedings were not conducted in accordance with law since no Presenting officer had been appointed and the Enquiry officer had assumed the role of the Presenting officer. The same is a severe procedural

lapse. The role of the Enquiry officer is of an independent adjudicator. Such a situation cannot be legally sustained where he himself assumed the role of the Presenting officer and proceeds to punish the delinquent by relying upon the extraneous materials as has been done in the instant case. Even otherwise the proceedings are vitiated since non-supply of a copy of the enquiry report to the petitioner amounts to depriving the petitioner of his vital opportunity to make his submission in respect of the findings recorded by the Enquiry officer. Fact that the petitioner was allowed or was heard before the Board of the respondents' Corporation which has affirmed the punishment imposed by the Disciplinary authority, will not validate the non-supply of the enquiry report to the petitioner. The petitioner was required to be given an opportunity before the recording of the punishment by the Disciplinary authority which in the instant case has not been done. In view of the aforesaid infirmities, the punishment order is unsustainable as the entire proceedings have been conducted illegally and in gross violation of the principles of Natural justice as discussed above.

15. In view of the aforesaid findings, order of punishment dated 22.3.2002 as well as order dated 28.3.2002 confirming the same which has been issued by the MD of the BICICO communicating the decision of the Board of Directors to affirm the punishment order, are quashed. As a result of quashing of the impugned orders, the petitioner would be entitled to the consequential benefits other than the payment of full salary. It is submitted by the counsel for the petitioner that for the period of suspension the petitioner has not been paid even subsistence allowance. The same must be paid to him from the date of suspension till the date of issuance of punishment order passed by the respondent authorities. It is further submitted by the petitioner that in view of the illegal order of termination, he was prevented from working from 25.9.2001 till the date of his retirement, i.e. 31.12.2006. The admitted position is that the petitioner has not worked in the respondent Corporation during the said period from 25.9.2001 till 31.12.2006. Counsel for the petitioner submits that in the meantime the petitioner though he was willing, has been illegally restricted from performing his duties and has suffered on account of his illegal dismissal from service. This Court is of the view that interest of justice would be served by allowing the petitioner payment of 50% of his salary for the period from 25.9.2001 till 31.12.2006. The respondents would be obliged to pay the consequential benefits to the petitioner after assessing his admissible dues under the head subsistence allowance and 50% salary as indicate above within twelve weeks from the date of receipt/ production of a copy of this order.

16. The writ petition stands allowed in the aforesaid terms.