

(2007) 04 PAT CK 0117
In the Patna High Court
Case No : C.W.J.C. No. 11925 of 2006

Sachidanand Lal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2007) 2 BLJR 1916 : (2007) 2 PLJR 498

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Ashok Kr. Choudhary and Manish Misra, for the Appellant; Nawal Kishore Singh, S.C. VI and Rajesh Kr. Singh, J.C., for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh, J.—Heard learned Counsel for the parties.

2. Petitioner was working as the Head Clerk in the Office of the Sub Divisional Officer, Muzaffarpur. On 20th June, 1986 he was transferred as such Head clerk from the Office of the Sub Divisional Officer to the Office of the Anchal Adhikari, Katra Anchal, Muzaffarpur. On 14th August, 1986, the Sub Divisional Officer issued a relieving order in favour of the petitioner. There is no dispute that subsequent thereto the petitioner did join the Office of the Anchal Adhikari as Head Clerk. While the petitioner was discharging his duties of Head Clerk at the Office of the Anchal Adhikari, he was but under suspension by an order dated 4th May, 1987. In this order of suspension, it was indicated that the petitioner is being put under suspension for the petitioner despite requests failed to hand over charge of the Office of Head Clerk attached to the Office of the Sub Divisional officer upon his transfer and that when the Office of the Anchal Adhikari was inspected, the petitioner was not found discharging his duties from a date of a month and, accordingly, it was held out that the petitioner is unauthorised absenting himself from his duties.

3. Subsequent thereto an Enquiry Officer was appointed. To the Enquiry Officer the petitioner wrote a letter and thereby prayed for grant of some more time to give his appropriate representation. Thereupon an order was passed on 20th September, 1990 (Annexure-7) and thereby the petitioner was dismissed from his services. Petitioner preferred an appeal before the appropriate authority contending that the petitioner was not given a chargesheet, he was not given an appropriate opportunity to prove himself innocent the alleged charges, the matter was not enquired upon and accordingly the dismissal order is not valid in law. This contention of the petitioner was accepted by the appellate authority, who by an order dated 29th November, 2000 while set aside the order of the disciplinary authority directed the disciplinary authority to reconsider the matter.

4. Thereupon the matter remained in the cold storage and accordingly the petitioner approached this Court by filing the present Writ Petition and thereby called upon the disciplinary authority to explain the unreasonable delay in complying with the order of the appellate authority. While the Writ Petition was pending, the petitioner was asked by the disciplinary authority to visit him. The petitioner visited the disciplinary authority and soon thereafter the disciplinary authority passed an order reaffirming the earlier dismissal order passed by the disciplinary authority on 20th September 1990. The principal reason appears to be, as culled out from the said order as well as the various affidavits filled by the respondents in the present Writ Petitions, that the petitioner did not, despite giving opportunities, dispute the allegations as were levelled against him.

5. On the last occasion when I had an occasion to hear the matter, I called upon the respondents to produce the record pertaining to the disciplinary proceedings. After the records were produced, I directed the respondents to file a supplementary counter affidavit enclosing therewith a copy of the chargesheet, evidence suggesting service of the chargesheet upon the petitioner, the order appointing the Enquiry Officer, communication of the information pertaining to such appointment to the writ petitioner, the reply of the petitioner, if any, and the enquiry report as prepared by the Enquiry Officer if any. In terms thereof a further supplementary counter affidavit has been filed whereby it has been indicated that the appointment of to the Enquiry Officer was duly communicated to the petitioner and thereupon the petitioner asked in writing for further time to make his representation. Apart from that nothing else has been brought on record. Therefore, the records pertaining to the enquiry proceedings do not contain a copy of the chargesheet, any evidence suggesting issuance of a chargesheet, service thereof upon the petitioner, any peremptory notice issued by the Enquiry Officer fixing the date of enquiry, communication of such notice upon the petitioner or the enquiry report and accordingly the enquiry proceedings is vitiated by reason of the provisions contained in Sub-article (2) of Article 311 of the Constitution of India. It is not the case of the respondents that by exercise of power granted by the second proviso to Sub-article (2) of Article 311 of the Constitution of India, the requirements of Sub-article (2) of Article 311 had been dispensed with. In such circumstance the one and the only logical

conclusion would be that the said order of dismissal as was passed in 1990 and reaffirmed during the pendency of the present writ petition being contrary to and in violation of Sub-article (2) of Article 311 of the Constitution of India is void ab initio and has thus no effect at all.

6. If the applicability of Sub-article (2) of Article 311 of the Constitution is not dispensed with by exercise of power contained in the second proviso thereto, then the requirement of the said sub-article is to inform the delinquent of the charges against him, to give him an opportunity of hearing and then to decide the matter upon consideration of the case made out by the delinquent at such hearing. In the instant case, the petitioner was not informed of the charges against him. The Enquiry Officer did not give an opportunity of hearing for he did not fix a peremptory date of hearing after the petitioner made a request for postponement of the hearing. Inasmuch as no chargesheet was issued and no Opportunity of hearing was given the conclusion arrived at is non est in the eyes of law.

7. It is true that in the suspension order the petitioner was told that there are two charges against him. The suspension order was not represented to be the chargesheet. In accordance with the rules authorising the disciplinary authority to suspend an employee, as that of the petitioner, such power can be exercised in contemplation of a disciplinary proceeding or in course of a disciplinary proceedings or if the petitioner has been arrested on the charge of committing a crime of moral turpitude or if a criminal proceeding containing such charge is pending. That abundantly makes it clear that suspension is no part of the disciplinary proceedings suspension is an independent incident which will come into existence upon using power to suspend in the circumstances authorised by law.

8. Furthermore, even assuming the charges were of not handing over charge and unauthorised absence, the records as were within the custody of the disciplinary authority would amply demonstrate that the said charges had no legs to stand. The fact remain that the petitioner was relieved on 14th August, 1986 by the Office of the Sub Divisional Officer. If the petitioner had not handed over charge, how the question of relieving him would have arisen? To the disciplinary authority himself, the petitioner's then immediate superior Officer, namely, Anchal Adhikari, wrote a letter and therein indicated that the petitioner was present on every day of the month in question and has drawn salaries for the entire month without any deduction and accordingly the question of his being absent from any day of that month did never arise.

9. The rules covering the service conditions do not authorise suspension by way of punishment. In any event no one can be condemned or punished without letting him know why he is to be punished without giving him an opportunity to defend himself. As aforesaid suspension could be effected in the circumstances as mentioned above and in no other circumstance. It is no bodies case that the petitioner was ever arrested or he was involved in any criminal proceeding. A

disciplinary proceeding is launched by serving a chargesheet. A disciplinary proceeding can be initiated or launched until the relationship of employer and employee subsists, but not after the employee ceases to be an employee after his superannuation. Admittedly, before his petitioner attained the age of superannuation no disciplinary proceeding was launched by serving a chargesheet upon the petitioner. There was therefore, no disciplinary proceeding in contemplation. Thus the suspension order is non est for the same was not issued under any of the circumstances under which the same could be issued.

10. The logical conclusion, therefore, would be that a superior officer as that of the disciplinary authority for no just reason harassed the petitioner right from 4th May, 1987 until 2006. He once again for no just reason repeated the abrasively illegal order as was passed in 1990 dismissing the petitioner. For such action on the part of the Officers of the State, the petitioner has suffered such quandary which cannot be compensated in money. It is even more surprising that after purported dismissal of the petitioner, no step had been taken to release his GPF contributions or his Group Insurance money. This conduct itself amply demonstrates that a few Officers of the State acted in a malicious manner and converted a healthy and otherwise dignified State Government employee into a straitened and forced him in abject penury resulting in the death of one of his sons for inability to afford medical expenses. If a Court of Enquiry is unable to compensate such a litigant before it, there is no need for existence of such court. It is, therefore, my duty, while to uphold the services of the petitioner and that his dismissal was absolutely illegal, it is my duty to compensate the petitioner to the extent possible.

11. In those circumstances, the Writ Petition is allowed. The order of suspension dated 4th May, 1987 as also the order of termination or dismissal dated 20th September, 1990 as repeated by the order dated 19th October, 2006 are quashed. It is declared that by reason of these illegal orders the petitioner was prevented from discharging his duties as an employee of the State. Accordingly, the petitioner is entitled to all his wages right from the date of the order of suspension dated 4th May, 1987 until the date he attained superannuation in accordance with the service records and he shall be paid such salaries less suspension allowance, if any, paid to him, together with interest at the rate of 10% per annum from the due dates thereof until the date of payment, which payment must be made within 15 days from today and in default such interest shall stand enhanced to 25% on the expiry of 15 days from today. Within a month from today, the entire terminal dues of the petitioner proceeding on the basis of that he superannuated on the date of his superannuation in accordance with his service records be settled and paid to him. In default the same shall carry interest at the rate of 15% per annum from the date of default until the date of payment.

12. The State Government is directed to recover the amount of interest from such officer / Officers of the State for whose wrongful actions the petitioner's

due payments had been withheld without any just reason.

13. In addition to what has been stated above, the State Government is directed to compensate the petitioner by making payment of Rs. Twenty Five lacs within a period of three months from today, quantified by doubling the annual income of the petitioner on account of salaries, pension and investments on his savings, not received for twenty years, for which he suffered triple prejudice, namely, no means to support him, loss of status and image in the estimation of the public, and mental in the estimation of the public, and mental agony resulting in acute depression which sum the State Government is directed to recover from such Officer / Officers of the State for whose conduct as complained of in the writ petition the petitioner had to suffer an inhuman suffering.