

(2010) 06 PAT CK 0047

In the Patna High Court

Case No : L.P.A. Nos. 1614 and 1615 of 2009 and L.P.A. No. 582 of 2010

Sandhya Kumari

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Citation : (2010) 06 PAT CK 0047

Judgement

R.M. Doshit, C.J. and Shiva Kirti Singh, J.—These three appeals, preferred under Clause 10 of the Letters Patent arise from the common judgment and order dated 12.11.2009 passed by the learned Single Judge in CWJC Nos. 14323/2009 and 14407/2009.

2. L.P.A. Nos. 1614/2009 & 1615/2009 have been preferred by the writ Petitioner in so far as the learned Single Judge has refused to quash the disciplinary proceeding initiated against her and has refused to quash the order of suspension made against her. LPA No. 582/2010 has been preferred by the State in so far as the State is directed to pay subsistence allowance to the writ Petitioner for the entire period she has been placed under suspension irrespective of the fact that she has not remained present at the Headquarters and that she has not marked her attendance in the attendance register.

3. By order dated 13.1.2009 the writ Petitioner, a Child Development Project Officer, has been placed under suspension. During the period of suspension, her Headquarters is kept at Patna. A disciplinary proceeding has been initiated against the writ Petitioner for the alleged acts of commission and omission amounting to misconduct. It is alleged that she made selection of Anganbari Sevikas in contravention of the Departmental Guidelines No. 2783 dated 3.10.2006. Pending the disciplinary proceeding the writ Petitioner did not remain present at the Headquarters nor did she mark her attendance. The writ Petitioner was, therefore, not paid the subsistence allowance otherwise payable to her.

4. Feeling aggrieved she filed the above CWJC No. 14407 of 2009 and prayed, inter alia, that the order of suspension and the charge-sheet dated 13.1.2009

issued against her be quashed. She alleged mala fide against some top ranking politicians and the Members of the Special Committee of the Bihar Vidhan Sabha. She also filed the above CWJC No. 14323 of 2009 challenging the supplementary memorandum of charge dated 5.2.2009.

5. The writ petitions were contested by the State Government. According to the State Government, unless the writ Petitioner reported at the Headquarters and marked her attendance, she would not be entitled to subsistence allowance.

6. The learned Single Judge was pleased to allow the writ petition partially. The learned Single Judge was pleased to rely upon the judgment of the Hon''ble Supreme Court in the matter of Anwarun Nisha Khatoon Vs. State of Bihar and Others, to hold that "there is no requirement for a suspended employee to mark attendance before his subsistence allowance could be paid. A suspended employee is entitled to be paid his subsistence allowance as the master servant relationship subsists".

7. Following the judgment, the learned Single Judge was pleased to direct the State Government to pay to the writ Petitioner the arrears of subsistence allowance with interest @ 5%. The learned Single Judge was further pleased to direct the State Government to hold enquiry, fix administrative responsibility for non-fulfillment of statutory obligations and recover the amount of interest from the person concerned including issue of initiation of departmental proceedings against him. The learned Single Judge, however, refused to quash the disciplinary proceeding or the order of suspension made against the writ Petitioner.

8. Feeling aggrieved the writ Petitioner has preferred the above L.P.A. Nos. 1614/2009 and 1615/2009 and the State Government has preferred L.P.A. No. 582/ 2010.

9. Mr. Purushottam Kumar Jha, learned Advocate has appeared for the writ Petitioner. He has assailed the judgment of the learned Single Judge in so far as the learned Single Judge has refused to quash the disciplinary proceeding or to revoke the order of suspension. Mr. Jha has taken us through the record. He has strenuously urged that the disciplinary proceeding has been initiated against the writ Petitioner on account of interference by some political person. The initiation of disciplinary proceeding is actuated by mala fide. He has also submitted that the initiation of the disciplinary proceeding is uncalled for. The charges levelled against the writ Petitioner are false and baseless. None of the selections alleged to have been made by the writ Petitioner was, in fact, made by her. The proceeding requires to be quashed and set aside. He has submitted that no Gazetted Officer of the State has ever marked his/her attendance in the attendance register nor the writ Petitioner, who is the Child Development Project Officer, is required to sign her attendance.

10. L.P.A. No. 582 of 2010 has been preferred belatedly by the State in so far as the learned Single Judge has directed the State Government to pay subsistence

allowance to the writ Petitioner for the entire period of her suspension from service.

11. Interlocutory Application No. 2915/ 2010 u/s 5 of the Limitation Act has been filed by the State for condonation of 41 days delay occurred in preferring L.P.A. No. 582/2010. For the reasons mentioned in the Application, the delay in preferring the Appeal by the State is condoned. I.A. No. 2915/2010 stands allowed.

12. Mr. P.K. Shahi, learned Advocate General has appeared for the State. He has relied upon proviso (iii) to Sub-rule (1) of Rule 10 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. He has submitted that the said proviso specifically provides "that the Government servant shall be entitled to receive subsistence allowance only for such period when he is actually present at the Headquarters during the suspension period. He is required to mark his attendance in the attendance register meant for such Government servant." In the submission of Mr. Shahi, on the face of the statutory Rules of 2005, the above referred judgment of the Hon"ble Supreme Court has no applicability.

13. We agree with Mr. Shahi. The Hon"ble Supreme Court had no occasion to consider the Rules of 2005. In view of the prevalent rules to the contrary, earlier judgment of the Hon"ble Supreme Court has no applicability.

14. It is not in dispute that neither the writ Petitioner remained present at the Headquarters during the period of suspension nor did she mark her attendance. We are of the opinion that in view of the specific statutory rule that governs the conditions of service of the delinquent employee, the writ Petitioner was duty bound to remain present at the Headquarters and to mark her attendance in the attendance register. Indisputably, the writ Petitioner did not remain present at the Headquarters, nor did she mark her attendance. The above proviso to Rule 10(1) of the Rules of 2005 is clear and unambiguous. It does enjoin the delinquent servant placed under suspension to remain present at the Headquarters and to mark the attendance. It is a pre-requisite to claim subsistence-allowance during the period of suspension. In our opinion, the State Government was justified in refusing to pay subsistence allowance to the writ Petitioner. The learned Single Judge has erred in overlooking the aforesaid statutory provision and in following the earlier decision of the Hon"ble Supreme Court. The order of the learned Single Judge in so far as the State is directed to pay subsistence allowance to the writ Petitioner irrespective of her absence from the Headquarters requires to be set aside.

15. As to the disciplinary proceeding, we are of the opinion that it is too early to stall the disciplinary proceeding or to set aside the charges levelled against the writ Petitioner. It may be noted that though the writ Petitioner has alleged mala fide against certain persons in the State Government, such persons have not been impleaded as party Respondents. In absence of the parties against whom

the mala fides are alleged, the allegations of mala fide cannot be entertained. The disciplinary proceeding must proceed further to its logical end. It is clarified that in the event the writ Petitioner is found guilty and is visited with some punishment, she may challenge the order of punishment and will be at liberty to raise all available grounds including the ground of mala fides.

16. The order of the learned Single Judge refusing to quash the disciplinary proceeding is confirmed.

17. In so far as the order of suspension is concerned, we are of the opinion that the allegations made against the writ Petitioner are not such which warrant continuance of the order of suspension. The allegation is that the writ Petitioner made selection of Anganbari Sevikas contrary to the relevant guidelines. The selection of Anganbari Sevika is not a matter of recurrence. We are, therefore, of the opinion that continued suspension of the writ Petitioner pending the disciplinary proceeding is not required.

18. For the reasons aforesaid, we partially allow L.P.A. No. 1614 of 2009. The order of suspension dated 13.1.2009 is revoked. The writ Petitioner will be reinstated in service within three weeks from today. L.P.A. No. 1615/2009 is dismissed.

19. The impugned order dated 12.11.2009 of the learned Single Judge in so far as the State Government has been directed to pay subsistence allowance to the writ Petitioner for the period she did not remain present at the Headquarters and she did not mark her attendance is quashed and set aside. The writ Petitioner will not be entitled to subsistence allowance for the period during which she did not remain present at the Headquarters or she did not mark her attendance. Accordingly, L.P.A. No. 582/2010 is allowed.

20. It is clarified that this order shall not preclude the writ Petitioner from challenging the order of punishment or from claiming the salary for the period of suspension at the end of the disciplinary proceeding.

21. The Interlocutory Applications filed by the Appellant are accordingly disposed of.