
(1988) 09 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1390 of 1988

Sarda Nandan Pathak and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-09-1988

Acts Referred:

Citation : (1989) PLJR 624

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Abhay Singh and K.N. Singh, for the Appellant; S.N Jha and Subhash Kumar Jha, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this writ petition the petitioners pray for issuance of an appropriate Writ for quashing an order dated 10.2.1988 issued under the signature of Deputy Inspector General of Police, Eastern Range, Bhagalpur being Eastern Range Order No. 26 of 1988 whereby and whereunder the petitioner were placed under suspension. Shorn of all unnecessary details, the fact of the matter is as follows :-

The petitioners are police officers and are attached to Kahalgaon Police Station. On 22.9.1987 an incident occurred at Ekchari. In the said incident an armed mob surrounded the house of one Durga Singh and Debi Singh and threw missiles and brickbats at their houses. Three dead bodies were found lying in front of their houses and the said houses were also set on fire by the irate mob.

2. According to the petitioners, they did their best to control the situation. The petitioners have further contended that one D.D. Goswami, Assistant Sub-Inspector of Police also did his best to control the situation.

According to the petitioners, immediately thereafter higher police officers including the District Magistrate and Superintendent of Police came on the spot and took complete charge of the situation.

3. In relation to the aforementioned incident the Superintendent of Police examined several witnesses on 27.9.1987 and allegedly came to the conclusion that one Sri D.D. Goswami was prima facie guilty for the said incident. The said Sri D.D. Goswami was, therefore, directed to be placed under suspension by reason of orders as contained in Annexures 5 and 6 to the writ petition.

4. On 22.9.1987 the Deputy Inspector General of Police also inspected the place of occurrence. According to the petitioners, although the Superintendent of Police and the District Magistrate did not find any prima facie case against the petitioners and they did not hold the petitioners responsible for the said incident; by the impugned order dated 10th of February, 1988 and as contained in Annexure 8 to the writ petitioner, the Deputy Inspector General of Police placed the petitioners under suspension. The petitioners have stated that the grounds on which the said order of suspension was passed are wholly non-existent.

5. In this case a counter affidavit has been filed on behalf of the respondents no. 2 and 3. In the said counter affidavit it has been stated that the Deputy Inspector General of Police, Eastern Range, has directed initiation of a departmental proceeding as against the petitioners and for that reason they have been placed under suspension.

It has further been contended in the said counter affidavit that the Deputy Inspector General of Police himself had made supervision relating to the investigation of the cases lodged in connection with the aforementioned incident i.e. Kahalgaon Police Case No. 225 of 1987 and 226 of 1987 and he took into consideration the statements of various witnesses as noted in the case diary as also the supervision note of Superintendent of Police.

It has further contended that the Deputy Inspector General of Police also took into consideration the report of the Additional Superintendent of Police, C.I.D., Bhagalpur.

It has further been stated in the counter affidavit that the case of the petitioner and the aforementioned Sri D.D. Goswami stand on the same footing.

It has further been averred that four persons were killed and loot and arson had also taken place in presence of the armed force including the petitioners.

It is the categorical stand of the respondents that a prima facie case has been found for initiation of a proceeding against the petitioner, inter alia, on the charge of dereliction of duties.

It has further been stated in connection with the aforementioned case that the statements of the petitioners and the aforementioned Sri D.D. Goswami were taken which were prima facie found unsatisfactory.

6. Mr. Abhay Singh, the learned counsel appearing for the petitioners, has raised three contentions which are as follows:-

(a) The learned counsel submitted that there exists no factual basis for placing

the petitioners under suspension inasmuch as the same, inter alia, is based upon the statements of one Ashok Mandal; but from the statements of the said Ashok Mandal as contained in Annexures 8/A and 9 of the writ petition it would appear that the said Ashok Mandal has not made any allegation as against the petitioners.

(b) The learned counsel submitted that the order of suspension is vitiated in law as the same does not satisfy the requirement of Rule 840 (a) of the Bihar Police Manual or Rule 49A of the Civil Services (Classification, Control and Appeal) Rules, 1930.

(c) The learned counsel submitted that before passing the impugned order of suspension no preliminary enquiry was initiated and as such the same is vitiated in law.

The learned counsel has placed, in this connection, reliance upon a decision of the Supreme Court reported in P.R. Nayak Vs. Union of India (UOI), and 1982 B.B.C.J. 332 (Dr. Kapil Singh vs. The State of Bihar).

7. Mr. S.N. Jha, the learned Standing Counsel No. II appearing on behalf of the respondents in reply to the aforementioned statements took the following stands:

(a) The order of interim suspension being not a punishment, the same is not justiciable.

He further submitted that from the impugned order at contained in Annexure 8 to the writ petition, it would be evident that the departmental proceedings it contemplated on the basis of the various materials available on records and at mentioned therein, and as such it is not correct to say that there does not exist any factual foundation for passing the order of suspension.

(b) The impugned order itself states that the departmental proceeding would be initiated against the petitioner which means that the departmental proceeding is contemplated and in that view of the matter there is no justification for any grievance of the petitioners that no departmental proceeding is contemplated.

(c) In the instant case, although Rule 840 (a) of the Bihar Police Manual it not attracted and the provisions as contained in lection 840 (c) and Rule 49 (a) of the Civil Service (Classification, Control and Appeal) Rules 1930 are attracted.

(d) It was not necessary for the authorities to hold a preliminary enquiry before passing the order of suspension. In any event as the impugned order (Annexure 8) is based on sufficient materials and the concerned authority has come to decision relating to the gravity of the allegations on the basis thereof the order of suspension cannot be quashed by this court.

8. At the time of admission of this writ petition the impugned order of suspension was not stayed. It also appears that the petitioners stand transferred to other places.

9. Re :--Contention "A"

From a perusal of Annexure 8 to the writ petition, it is evident that the said order is not based upon the statements of Ashok Mandal only. The statements of the said Ashok Mandal and others have been taken into consideration only with regard to the fact two persons namely, Motu Mandal and Bageshwar Mandal were killed on the side of the railway line and two other persons namely, Madhu Mandal and Binay Kumar Singh were killed by Durga Singh, his sons and others by using fire arms near their houses.

From Annexure 8, it further appears that allegations have been made that whence firing took place resulting in death of the aforementioned two deceased persons, the petitioners and the aforementioned Sri D.D. Goswami were present. It has also been alleged that in presence of the petitioners, houses of the accused persons were set on fire and loot and arson was committed.

It has further been alleged that although the aforementioned overt act on the part of the accused persons took place in presence of the petitioners, they did not take any steps to prevent the same, which demonstrates various misconduct on their part. From the said order it further appears that because of the inaction on the part of the said police officers, the prestige of the police force has not only been lowered but also as a result thereof the irate mob started brickbatting on the police force and the vehicles belonging to them.

From the aforementioned facts as also from the other statements made in the counter affidavit, it is evident that factual foundation in support of the impugned order exists. In any event, the petitioners are being proceeded against in a departmental proceeding and therein it will be open to them to show that the allegations levelled against them are not correct. Further, it is well known for the purpose of considering as to whether there exists factual foundation for passing an order of suspension or not, sufficiency of materials is not justiciable.

10. Re:--Contention "B"

As noticed hereinbefore, it is admitted that Rule 840 (a) of the Bihar Police Manual has no application in this case. Apart from the aforementioned provisions, it may be mentioned that Rule 49A (1) of the Civil Service (Classification Control and Appeal) Rules, 1930 also provides for suspension of an employee when a departmental proceeding is contemplated or is pending. Rule 49A(1) of the aforementioned Rules reads as follows :-

Rule 49A(1) :--The appointing authority or any authority to which it is subordinate or the Governor by general or special order, may place Government servant under suspension :--(a) Where a disciplinary proceeding against him is contemplated or is pending; or

(b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

11. As noticed hereinbefore, in the impugned order as contained in Annexure 8 to the writ petition, the Superintendent of Police has directed to initiate a departmental proceeding after issuing chargesheet against the petitioner. There cannot therefore, be any doubt that the petitioners, were placed under suspension in view of the contemplated departmental proceeding. In P.R. Nayak's case (supra) the Supreme Court was considering the provision of All India Services (Discipline and Appeal) Rules, 1969, wherein there exists no provision for placing an officer under suspension whence a departmental proceeding was merely contemplated. In that situation only the Supreme Court considered the question relating to the nature and scope of a "disciplinary proceeding" and came to the conclusion that before the same is initiated some sort of preliminary enquiry should be held. The aforementioned decision of the Supreme Court has been taken into consideration by a Division Bench of this Court in Dr. Kapil Singh's case (supra) wherein the distinction between a case where an order of suspension can be passed upon initiation of a proceeding and when a departmental proceeding is contemplated has been pointed out. In the said decision it has clearly been held as follows:--

Paragraph 13 :-- "It was then submitted on behalf of the petitioner that as the Departmental Proceeding has not been initiated against the petitioner, he could not have been suspended. The learned counsel for the petitioner placed reliance on the two Bench decisions of this Court in the case of N. Sundaram vs. The State of Bihar and others and the case of Binod Bihari Lal and others vs. Rameshwar Prasad Sinha and others. In the case of N. Sundaram vs. The State of Bihar and others, a Bench of this Court on the basis of the aforesaid judgment of the Supreme Court in the case AIR 19 (sic) 2, SC, 559 held that an order of suspension cannot be passed in anticipation of or a contemplated disciplinary proceeding. Although in the said Bench decision, reference has been made (sic) Rule 49 of the aforesaid Rules, unfortunately the attention of the learned Judge was not drawn to Rule 49A which had been introduced as early as in the year 1973. Similarly, in the case of Binod Bihari Lal and others vs. Rameshwar Prasad Sinha and others, also the attention of the Bench was not drawn to Rules 4: A.

12. The aforementioned decision, therefore, relied upon by the learned counsel appearing for the petitioners, evidently, goes against this contention. It may be mentioned that the Kapil Singh's case (supra) has been followed by a learned single judge of the court in a case reported in 1987 P.L.J.R. 862 (Kamal Kishore Prasad vs. Bihar State Electricity Board and others). Apart from what has been found hereinbefore) in this case, in my opinion, requirements of Rule 840 (c) of the Bihar Police Manual are also fulfilled and in that view of the matter also, the order of suspension cannot be quashed.

13. Re : Contention "C"

From the counter affidavit filed on behalf of the opposite party it is evident that the petitioners and the aforementioned Sri D.D. Goswami were asked to explain their conduct but their statements were not found satisfactory. Further, in view of

the fact that an order of suspension can be passed on a contemplated "disciplinary proceeding", it was not necessary for the authorities to initiate any sort of preliminary enquiry before passing an order of suspension.

14. In this view of the matter, there is no merit in this writ petition. It is accordingly dismissed, but without any order as to costs. However, it is observed that as the petitioners have been under order of suspension for about eight months, it is just and expedient that a departmental proceeding, if not already initiated as against the petitioners, should be initiated immediately so as to complete the disciplinary proceeding within a period of four months from the date of receipt of a copy of this judgment.