
(2011) 11 PAT CK 0026
In the Patna High Court
Case No : CWJC No. 3894 of 2005

Satya Narain Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 2 PLJR 40

Hon'ble Judges : Kishore K. Mandal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. Ravi Kumar, learned counsel for the petitioner, Mr. O.P. Agrawal, learned counsel for the respondent no. 3 and Mrs. Binita Singh for the respondent State. Petitioner has filed the present application under Article 226 of the Constitution of India seeking a direction upon the respondents to treat his order of suspension quashed w.e.f. 1.2.1998, in view of the order passed by this Court on 17.9.1997 in CWJC No. 8707 of 1996. He has also prayed for a direction upon the respondents to pay him full salary for the period between December 1991 to August 1992.

2. Petitioner was serving the erstwhile Notified Area Committee, Dalsingsarai (now the Nagar Parishad) as Assistant. He was found indulged in committing embezzlement and an F.I.R. was lodged. He was also suspended in contemplation of departmental proceeding by order dated 5.8.1993. Aggrieved by the aforesaid order and the protraction of the proceeding, he filed writ petition being CWJC No. 8707 of 1996. On a consideration of the case of the parties, this Court by a proceeding dated 17.9.1997 (Annexure-1), disposed of the writ petition in the following terms:-

Considering the rival contention this Court disposes this writ petition by directing the respondents that the departmental proceeding must be concluded at an early

date and if the present enquiry officer has been transferred, the respondent will appoint a new inquiry officer and conclude the disciplinary proceeding by 31.1.1996. The petitioner may give reply to the charges without prejudice to his right to get the documents.

It is, however, made clear that the enquiry officer in course of enquiry will not rely on any document without giving a copy thereof to the petitioner. The petitioner is directed to cooperate with the enquiry officer in the matter of conclusion of the proceeding. If he does not do so, in that event the proceeding will be held expert against him and must conclude by 31.1.1998. If the proceeding is not concluded by 31.1.1998, the charges against the petitioner and the suspension order shall stand quashed on from 1.2.1998.

The respondents, are, however, directed to pay the petitioner subsistence allowance to which he is entitled to, including the arrears in accordance with law within a period of six weeks from the date of service of a copy of this order.

3. The petitioner thereafter again filed a proceeding being MJC No. 3796 of 1997 alleging disobedience and/or non-compliance with the order passed by this Court on CWJC No. 8707 of 1996. Several sets of show cause(s) were filed in which a stand was taken that in the light of order passed by this Court, the petitioner was authorized payment of admissible subsistence allowance and the authority after due notice to the petitioner proceeded with the enquiry and on conclusion thereof the order of dismissal from service was passed which was duly communicated to the petitioner on 12.11.1997. Said document is enclosed as Annexure-A to the show cause filed on behalf of the opposite party no. 3 the SDO-cum-Chairman, Dalsingsarai of the said proceeding. This Court, by order dated 4.4.02 passed in MJC No. 3796 of 1997 (Satya Narayan Choudhary vs. The State of Bihar & Ors.), dismissed the application in the following terms:-

No one appears for the petitioner. Learned counsel for the respondents however says that the order of this Court has been complied. In that view of the matter, the petition is dismissed."

4. Almost three years thereafter the petitioner has lodged the present writ petition seeking the aforesaid relief(s). Two sets of counter affidavit and supplementary counter affidavit have been filed on behalf of the respondents.

5. Learned counsel for the petitioner appearing in support of the application contended that the order of this Court passed on his earlier writ proceeding being CWJC No. 8707 of 1996 (Annexure-1) has not been complied with in letter and spirit by the respondents. It is contended that the petitioner had raised an issue of male fide against the conducting officer which was also not considered. In the submission of the petitioner since the order of this Court has not been complied with in letter and spirit the proceeding pending against the petitioner would stand quashed in terms of the operative portion of order dated 17.9.1997 (Annexure-1). Therefore, he was entitled for payment of salary and other relief"s prayed for in this application. By filing the interlocutory application the petitioner

has prayed for a direction for payment of his post retinal dues.

6. Learned counsel for the respondent, on the other hand, submits that in view of the stand taken by the respondents in the contempt proceeding and the final order passed thereat no part of relief prayed for in the application be granted to the petitioner. It is contended that petitioner was well aware of the order of dismissal passed against him by the respondents in the year 1997 yet the aforesaid fact has not been disclosed in the present writ proceeding. With regard to payment of admissible dues a stand has been taken in the supplementary affidavit that the respondents have already authorized the amount found due and admissible in favor of the petitioner which is/are not being accepted on one ground or the other by the petitioner.

7. I have heard the submissions of the parties and perused the materials on record. The contention of the petitioner that the proceeding stood terminated and the order of suspension stood quashed w.e.f. 1.2.1998, based on the observation findings made in CWJC No. 8707 of 1996, in my view, is completely misconceived. Learned counsel for the petitioner has tried to convince the Court that the said order was not complied with in letter and spirit. Raising the similar issue the petitioner had filed a contempt proceeding in which the opposite party brought on record the order by which the proceeding was concluded in November, 1997 itself and final order of dismissal was passed. This Court, on a consideration of the materials brought on record by way of show cause, disposed of the MJC on 4.4.2002 in the terms noted above. In face of the aforesaid order, this Court is not inclined to accept the submission of the petitioner that the order passed on his earlier writ petition dated. 17.9.1997 (Annexure-1) was not complied with by the respondent in letter and spirit.

8. On going through the pleadings made in the writ petition, it appears that the said order is not under challenge. Petitioner has only shown his ignorance of the said order. In the particular facts of the case, the said stand of the petitioner is deprecated. The application lacks merits. It is accordingly, dismissed.