
(1983) 03 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1015 of 1982

Shailendra Kumar Sinha and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 18-03-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 21, 311(2)
Industrial Disputes Act, 1947 — Section 25F

Citation : (1983) PLJR 700

Hon'ble Judges : S.K. Jha, J;A.K. Sinha, J

Bench : Division Bench

Advocate : Surendra Kr. Sinha, for the Appellant; Messrs Mani Lal, S.C. IV, Pramila Singh, J.C. to J.C.IV, for the Respondent

Final Decision : Allowed

Judgement

Ashwini Kumar Sinha, J.—By this writ application, the petitioners have prayed for issuance of a writ of certiorari for quashing Annexure-1 dated the 29th December, 1981, issued by respondent no. 3, the Executive Engineer, Sone Canal Division, Bikramganj, district Rohtas, by which the petitioners have been removed from their services. The facts of the case, briefly stated are as follows :

Petitioners 1, and 2 were appointed as Chairman in Sone Canal Subdivision and petitioner no. 3 was appointed as Moharrir in Sone Canal Subdivision Agiwan, Bhojpur. Petitioners were retrenched and were reinstated by order of respondent no. 3, Executive Engineer, which was subsequently confirmed and approved by respondent no. 2, Superintending Engineer, Thereafter the petitioners were again retrenched and again re-instated retrospectively on the 30th of June, 1976 (Annexure-3). The petitioners have stated that they continued in their services without any break since the 20th April, 1976, and had put in more than 244 days of service and, thus, they had acquired the status of a permanent incumbent. The petitioners' case was that they were validly appointed by the Executive Engineer which order was confirmed by the Superintending Engineer and there

was absolutely no irregularity in their appointment. The petitioners challenge the order of removal (Annexure-I) on the ground that it was mala fide and also bad in law as it violated the principles of natural justice and that it was also discriminatory, as juniors to the petitioners had been retained in service.

2. The respondents in their counter-affidavit have stated that the petitioners have been removed from their services as their appointments were irregular. According to the respondents, their appointments were against the Government letter no, 14094 dated 25.7.1975 which had put a bar on the appointments of Muster Roll staff and there was a clear instruction that, if any hand was (sic) it should be filled up from amongst extra hands already working. The respondents have further stated that the petitioners had filed a Title Suit bearing no. 1 of 1982 which was pending disposal in the Court of the 1st Munsif, Sasaram, and the prayer made by the petitioners for temporary injunction was rejected on 27.2.1982 and only thereafter the petitioners have filed the instant writ case. The respondents have further stated that, though the petitioners in their Title Suit had filed a petition for withdrawal of the suit but no order for withdrawal has been passed. Thus the main stand taken by the respondents is that the petitioners' appointment being irregular, the order of removal did not suffer from any infirmity.

3. On a perusal of Annexure-7, it appears that the aforesaid Title Suit filed by the petitioners has already been withdrawn on 10.6.1982.

4. Learned counsel for the petitioners has submitted, firstly, that the petitioners having put in more than five years of continuous service without any break, their services could not be terminated without complying with the provisions of section 25F of the Industrial Disputes Act; secondly, that the impugned order (Annexure 1) was hit by Article 311(2) of the Constitution of India, inasmuch as, the petitioners have not been afforded any opportunity of being heard and no notice at all was ever given to the petitioners prior to their removal; in other words, the impugned order was illegal, as it was against the principles of natural justice; thirdly, that the order of removal was bad, as it was discriminatory and in violation of Articles 14 and 15 of the Constitution of India; and, lastly, that the impugned order was mala fide.

5. As the writ application must succeed on points 2, 3 and 4 mentioned above, I refrain from deciding point no. 1 even though the petitioners case of being in continuous service for more than five years and having put in more than 224 days of service has not been denied by the respondents in their counter-affidavit.

6. The petitioners in para 7 of their writ application have categorically averred that no notice or show cause was given to them prior to their removal from service and the petitioners were not given any reasonable opportunity of being heard. This fact has not been denied by the respondents in their counter-affidavit. The principle of natural justice is one of the foremost product of "Civilised Jurisprudence" namely, that no action should be taken against a person

to affect his right or interest without giving reasonable opportunity to him. The principles are grounded on justice, equity and good conscience. A man cannot be deprived of his right, liberty or property for any wrong until he has had a fair opportunity of answering the allegations against him, unless, indeed the legislation has expressly or impliedly given an authority to act without that necessary preliminary. In the instant case, admittedly, (a) notice and (b) prior opportunity of hearing, were withheld. The rule of natural justice casts duty on all public authorities who decide dispute in exercise of legal power to follow the rule diligently. The rule, which is respected the world over, cannot be immolated or sacrificed at the altar of administrative celerity. By now, it is well settled that the principles of natural justice equally applies to administrative actions, In England, before the landmark case of Ridge v. Baldwin (1964) AC 40, the rules of natural justice were applied only to judicial and quasi-judicial proceedings which necessitated the Courts to discern whether the impugned action was taken by the authority in exercise of its administrative or quasi-judicial power. After Ridge v. Baldwin the concept of natural justice has made a great leap in the field of administrative law. In the State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , the Supreme Court has held that even an administrative order or decision involving "civil consequences" has to be made consistently with the rule of natural justice. Skipping over a number of leading decisions the distinction was eroded in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, where it was observed :

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.

In a welfare State like ours, it is inevitable that the organ of the State under Our Constitution is regulated and controlled by the rule of Jaw. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their function in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously.

With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new depotism.....

7. A statutory body or Tribunal, irrespective of the fact whether the powers conferred on them are administrative or quasi-judicial, has obligation to act fairly, in consonance with the fundamental priciples of substantive justice and,

therefore, bound to follow the rule of law. The rule of natural justice came up for consideration in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, and a new ground was broken--violation of the principles of natural justice, it has been held, also affect the fundamental rights under Articles 14 and 21 of the Constitution. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , it has been ruled that violation of the principles of natural justice is to disregard the Constitutional mandate under Article 14 as also the judicially evolved rule of administrative law.

8. Thus, it is clear that an order or decision involving "Civil consequences" has to be made consistently with the rule of natural justice. It is also relevant to mention that the petitioners have contributed to Provident Fund and also Group Insurance Scheme, as it appears from Annexure-6, 6(l) and 6(2). Petitioners' Service Books were also opened.

9. In the instant case, I find that no notice was served on the petitioners before rendering the impugned order. The petitioners' right was extinguished by a stroke of pen. The impugned order was rendered patently violating the principles of natural justice. Therefore, the incongruous order must be wiped out and the inevitable orders must flow. On this ground alone, the impugned order is quashed.

10. Coming to the third submission advanced by the learned counsel for the petitioners, i.e., juniors to the petitioners having been retained in service, the order was discriminatory; I find that there is much force in this submission also. The petitioners in para 5 of their writ case have named 16 persons as juniors to them who have been retained in service. The respondents, in their counter-affidavit, have not denied this statement rather in reply to the statement made in para 5 of the writ application they have stated as follows :

That with regard to the statement made in paragraph no. 5, it is stated that only two persons mentioned in this para were relation of either retired or going to be retired employee and upon their application they were appointed after making full enquiry.

This reply on behalf of the respondents is no reply to the statement made by the petitioners in para 5 of their writ case, and the fact remains that the juniors to the petitioners have been retained in service without being fair to the petitioners and, on this ground also, the impugned order is bad in law and is quashed.

11. Coming to the last submission advanced by the learned counsel for the petitioners to the effect that the impugned order Was mala fide, I find that there is much force in this submission as well. The petitioners in para 4 of their writ case have stated as follows: That it may be stated that the petitioners have been removed from the service because one influential M.L.A. Smt. Veena Rani who belonged to Janata Party wanted some of her men to be appointed to the posts and in view of the policy of the State Government to accommodate retrenched employees her men could not be appointed and therefore she started

writing letters and picking hole in the petitioners'' appointment and consequently the petitioners have been victimised malafide and the removal of the petitioners is a colourable act.

Though this has been denied by the respondents in their counter-affidavit, I find that the allegation of mala fide on the part of the respondents is substantiated by Annexure-A to their counter-affidavit itself wherein the name of Smt. Veena Rani, M.L.A., is mentioned and, to me, it is clear that she has been instrumental in picking out the names of these petitioners alone and getting them removed from their service. I find, on a careful perusal of the averments made in the writ case, reply thereto, reply to the reply and the Annexures that the petitioners have been removed in a most arbitrary manner and the respondents have acted mala fide in order to please the then M.L.A. Smt. Veena Rani. The impugned order is, thus, bad on this ground also.

In the result, this application is allowed and the impugned order is quashed. But, in the circumstances of this case, here will be no order as to costs.