
(2003) 08 PAT CK 0091
In the Patna High Court
Case No : CWJC No. 7009 of 2003

Shamsher Bahadur Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-08-2003

Acts Referred:

Bihar Service Code, 1952 — Rule 97(2)

Citation : (2003) 3 BLJR 1871 : (2004) 2 PLJR 379

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. Learned counsel for the State submits that he has received instructions and would argue the matter.

3. The petitioner was placed under suspension and was charge-sheeted for misconduct. He stood retired from the post of Sr. Clerk on 30-4-1993 but he was not given dues of gratuity, leave encashment etc., therefore, he came to this Court in C.W.J.C. No. 10827 of 1999. While disposing of the said writ application on 23-8-2002, this Court directed that on conclusion of the departmental proceedings or the criminal proceedings, the State would be entitled to pass appropriate orders in accordance with law irrespective of grant of retiral benefits to the petitioner. This Court also directed/observed that it is expected that the departmental proceedings shall be concluded in accordance with law at an early date preferably within six months. The said order was challenged by the State of Bihar in L.P.A. No. 1193 of 2002 but the Division Bench refused to interfere in the matter, thereafter the impugned order dated 22-2-2003, contained in Annexure-1, was issued.

4. From the impugned order, it appears that the departmental enquiry was not concluded nor did it reach to its logical end but, however, in view of the order

passed by this Court in C.W.J.C. No. 10827/1999, it was observed that the period between 13-12-1979 to 25-10-1984 shall be deemed to be the period of suspension and the petitioner would not be entitled to anything except for the subsistence allowance.

5. The petitioner being aggrieved by Annexure-1 has come to this Court. He has also challenged the order contained in Annexure-2 wherein the Director, Animal Husbandry has directed that certain amounts be recovered from the petitioner and only thereafter, the balance would be paid to him.

6. In Annexure-1, the letter dated 22-2-2003, it is clearly mentioned that the departmental enquiry was not completed or concluded while in Annexure-2, the letter dated 20-2-2003, the very same Officer i.e. Director, Animal Husbandary, Bihar observes that the departmental enquiry stands concluded in the terms as stated in Annexure-2. I fail to understand that how an Officer can act in such a manner. Within two days he appears to have forgotten his earlier order. The directions issued by him, in fact, run contrary to what has been observed in Annexure-1.

7. I also fail to understand that if the departmental enquiry was not concluded, no findings into the guilt or otherwise of the petitioner were recorded then how an order for recovery of the amount could be passed against the petitioner. From Annexure-2, it appears that the Director has observed that a sum of Rs. 14,495.92, the alleged misappropriated amount would be adjusted towards the memo relating to payment of Rs. 5438.22. The balance amount has been directed to be adjusted from the leave encashment. This order apparently is bad. Unless a finding was recorded by the Director or the Disciplinary Authority that the petitioner committed misconduct and had defalcated the said amount or misappropriated the same, no order for recovery could be passed against him. From Annexure-1, it is clear that the departmental enquiry did not come to its logical end. If that be so, the directions contained in Annexure-2 cannot be allowed to stand. This deserves to and is accordingly quashed.

8. So far as the directions made in Annexure-1 are concerned, the same also appear to be bad. Learned counsel for the State submitted that in accordance with Rule 97 of the Bihar Service Code, the competent authority is competent to issue such a direction.

9. It is to be seen that Rule 97 of the Code finds place in Section 4 of Chapter IV of Part I of the Bihar Service Code. Section IV is under the title "Payments in cases of dismissal, removal or suspension". Sub-rule (1) of Rule 97 of the Code relates to a contingency where a Government servant, who has been dismissed, or suspended is reinstated and an order is required to be passed in relation to his pay and allowance for the period of his absence from duty and whether such period is to be treated as a period spent on duty.

10. Sub-rule (2) of Rule 97 covers the cases where the authority mentioned in Sub-rule (1) is of the opinion that the Government servant has been fully

exonerated or in the case of suspension, that it was wholly unjustified, the Government servant would be given full pay and allowance to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be.

11. Sub-rule (3) of Rule 97 of the Code refers to the other cases and the Government servant in such cases shall be given such proportion of such pay and allowances as such competent authority may prescribe. In my humble opinion the other cases referred to in Sub-rule (3) of Rule 97 of the Code shall be the cases wherein the departmental enquiry has come to its logical end. It would not cover a case where a departmental enquiry has been initiated but dropped or has been given up half way. If the submission of the learned counsel for the State is allowed to stand, it would lead to an anarchy. Any Officer may suspend his subordinate, keep him under suspension for years together and one fine morning revoke suspension either drop the enquiry or refuse to proceed with the enquiry and cause monetary loss to the suspended person by saying that but for the subsistence allowance he would not be entitled to anything. Sub-rule (3) in its true perspective would be a case of residuary application to the cases where the departmental enquiry has come to an end but the cases are not covered under Clause (1) or Clause (2) of Rule 97 of the Code. Present is a case where the enquiry was not concluded despite directions of the High Court. Present is a case where the enquiry has not been concluded at all. If enquiry has at all not been concluded and has been left half way then how can the authority say that the person has been found guilty or would not be entitled to his balance salary beyond the suspension/subsistence allowance.

12. Taking the case of a pension, who faces the enquiry and is fully exonerated, in his case he would be entitled to the full salary, if he is fully exonerated and the suspension is found to be bad or unjustified under Sub-rule (2) of Rule 97 of the Code. Can the case of the present petitioner or people alike him be placed on worst footing; in the case of the earlier person, he has been given clean chit but in case of the present petitioner, the Department thought that no useful purpose would be served by concluding the enquiry. In the opinion of this Court, the case of the present petitioner would stand on better footing in comparison to the persons, who have been found absolutely ignorant or in whose favour a clean chit has been given.

13. The order contained in Annexure-1 is patently illegal. It cannot be allowed to stand. It deserves to and is accordingly quashed.

14. The petitioner is also entitled to full salary for the period between 13-12-1979 to 24-10-1984. The petition is allowed. It is further directed that the respondents shall pay the said amount within a period of four months from today.