

(2007) 02 PAT CK 0166
In the Patna High Court
Case No : CWJC No. 9433 of 2003

Shashi Kant Shrivastava

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Citation : (2007) 4 PLJR 526

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—Heard counsel for the parties. The petitioner was an employee of Bihar State Co-operative Marketing Union Limited (BISCOMAUN). He was dismissed from service vide letter dated 30.5.1985 for charges of defalcation which came to be proved against him while working as Assistant Depot Manager at Raghunathpur Depot of BISCOMAUN. This order of dismissal was challenged by way of Service Appeal No. 240/1985 filed before the Registrar, Department of Co-operative, Government of Bihar. It is not understood as to under what circumstances appeal of 1985 was kept pending for more than 18 years and had finally came to be disposed of against the petitioner vide order dated 12.3.2003, which is Annexure-1 to the writ application.

2. The petitioner has challenged this order dated 12.3.2003 (Annexure-1) as well as order dated 30.5.1985 contained in Annexure-2 i.e. the order of dismissal. The petitioner in his writ application has formulated his contentions challenging the impugned orders on the ground that no departmental enquiry was held in his presence. He was not given a chance to give his defence. No chance was given to adduce any defence witnesses and finally that no enquiry report was ever furnished to the petitioner. This according to the petitioner goes to the root of the matter and in view of violation of Principles of Natural Justice, the orders in question should be set aside.

3. One thing which is glaring about the present writ application is that the order of dismissal relates to the year 1985 and this dismissal order has come to be affirmed by the Registrar, Co-operative Societies. The delay in disposal of the appeal, therefore, kept the issue alive for more than 18 years. Whether this delay in disposal was with an object or purpose cannot be concluded at the outset but it does make the whole issue a bit suspicious.

4. A counter affidavit has been filed on behalf of respondents no. 3 and 4 i.e. BISCOAUN and they have taken stand that the petitioner has not stated true facts and the facts and circumstances as narrated by the petitioner is far from truth. They have supported the order passed by the Registrar, Co-operative Societies as contained in Annexure-1 where the Registrar had taken note of the facts and after discussing all the issues the authority in its wisdom has decided to dismiss the appeal. It is reiterated that the order contained in Annexure-1 records the fact that vide letter dated 16.1.1982 as well as 23.8.1984 petitioner was issued show-cause, the matter was enquired into and thereafter vide letter dated 4.5.1985 a second show-cause was also issued. The second show-cause was replied to by the petitioner on 18.5.1985.

5. The respondents have further brought the reply of the petitioner to the second show-cause on record as Annexure-B as well as a petition dated 21.6.1985 filed by the petitioner before the Managing Director, BISCOAUN praying for revoking the order of discharge. The respondents want to demonstrate that in both these important communications of the petitioner none of the contentions with regard to enquiry, opportunity of hearing or service of enquiry report has been made an issue. The petitioner has not raised any grievance with regard to any of these aspects which now form the foundation of challenge in the present writ application. In fact a perusal of these documents itself shows that the petitioner had at no point of time complained about any prejudice which may have been caused to him due to the action taken against him by following the due procedure of law. They also suggest that since the matter is very old relating to the year 1982-85 and the records not being available now with the respondents the petitioner has intentionally raised these questions to prejudice the Court and draw advantage.

6. This Court has also perused Annexures-B and C annexed with the counter affidavit and the perusal of the same surely indicates that the petitioner has tried to explain his conduct and culpability through these two annexures addressed to the Managing Director. In both these annexures there is no whisper or murmur with regard to the way the enquiry was held against the petitioner and that he was not given adequate opportunity to defend himself or that an enquiry report has not been furnished to him. All these seems to be an afterthought since more than 18-20 years have already passed and these records are not available with the respondents to controvert the assertions being made at this stage.

7. Learned counsel for the petitioner has placed strong reliance on a sentence recorded in Annexure-1, which states, "The admission of learned counsel for

BISCOMAUN that he has not seen any enquiry report or, has received any file will hardly absolve the appellant". This according to the petitioner has a bearing to his case because according to the above observation made in the order contained in Annexure-1 even the counsel for BISCOMAUN had not seen the enquiry report or the file related to the petitioner.

8. In my opinion too much is being read into that line by the petitioner. It has already been observed above that this appeal was decided after 18 years of order of dismissal and the absence of the necessary file with the counsel for BISCOMAUN cannot be said to be surprising. Mere fact that the related file was not available with the counsel it does not mean that no proper enquiry was held or that the petitioner was not given fullest opportunity to defend himself. As already taken note of, Annexures-B and C are adequate proof of the fact that the petitioner was given a second show-cause and thereafter also he filed his representation against his dismissal. Since he has not raised any grievance in those early stages it is doubtful whether he can be permitted now to play around with legal proposition without any supporting evidence to challenge the order of dismissal passed against him in the year 1985.

9. All the contentions raised by the petitioner seems to be an afterthought and has been intentionally raised at this stage knowing full well that some of these facts cannot be controverted straightway. As the necessary records are not available with the respondents, to rebut the contentions so late in the day as 18-20 years have gone past since the impugned order contained in Annexure-2 was passed, the petitioner cannot be allowed to take advantage of the real position.

10. Before parting this Court also takes notice of the fact that it is because of misconduct or indiscretion on the part of employees like the petitioner that the respondent body has reached a stage that they are not in a position to pay salary or other accepted dues of the present or past employees. BISCOMAUN has virtually become defunct.

11. In view of the above factual matrix discussed, this Court is unable to accept the contentions raised by the petitioner in the present writ application. In fact whatever documents which are available on record and has been brought as evidence in the counter affidavit belies the contention of the petitioner. This writ application is accordingly dismissed as being devoid of any merit.