

(2012) 01 PAT CK 0107
In the Patna High Court
Case No : CWJC No. 7031 of 2007

Shyam Kishore Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2012) 2 PLJR 673

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Learned counsel for the petitioner and the State are permitted to correct the averments made in paragraphs-5, 15 of the writ petition and the counter affidavit respectively. Heard learned counsel for the petitioner and the State.

2. At the relevant time petitioner served as Clerk in the office of Weavers Co-operative Society, Gulzarbagh, Patna. He has filed this writ petition questioning the validity of the order bearing Memo No. 1125 dated 16.7.2005 Annexure-1 whereunder he has been dismissed from service on the ground of his conviction for the offence u/s 326 of the Penal Code in connection with Kako P.S. Case No. 64 dated 19.7.1981 instituted for the offences under Sections 147, 148, 307, 323 of the Penal Code and Section 27 of the Arms Act. Trial court convicted the petitioner for the offence u/s 307/149 I.P.C. and sentenced him to undergo R.I. for 6 years which was also maintained by the appellate court. This Court under orders dated 12.11.1999 passed in Cr. Revision No. 347 of 1995 Annexure-4, however, altered the conviction of the petitioner from 307 I.P.C. to one u/s 326 I.P.C. and sentenced him to undergo R.I. for one year after observing as follows:-

There is substance, in the submission made on behalf of the petitioners that offence took place suddenly and there was no pre-planning before the occurrence

in between the petitioners. The prosecution has failed to produce evidence that both these petitioners had intention or knowledge that under such circumstances their act of fire may cause death. It appears from the evidence adduced on behalf of the prosecution that firing was made without an intention to kill the informant.

3. In the light of the order dated 12.11.1999 passed by the High Court petitioner surrendered before the trial court to undergo the sentence of R.I. for one year. After serving the sentence petitioner submitted his joining and was placed under suspension under order bearing memo No. 162 dated 2.2.2001 Annexure-6. Charge sheet dated 20.8.2001 was also served on him under order dated 4.4.2002, Annexure-7 asking him to rebut the charge of conviction in connection with Kako P.S. Case No. 64 dated 19.7.1981. Paragraph-cha of the charge sheet, itself indicates that conviction of the petitioner is for overt act, which took place prior to his entering the Government service. The charge sheet also recites that during service tenure conduct of the petitioner has been satisfactory.

4. In response to the charge sheet petitioner submitted his written defence stating that Kako P.S. Case No. 64 dated 19.7.1981 was registered against him and other family members by the informant of the said case in connection with irrigation dispute which arose on 19.7.1981 between family members of the petitioner and informant much prior to his entry in service i.e. 5.11.1986 and as the conviction is for a occurrence, which took place at the spur of the moment without any premeditation much prior to the entry of the petitioner in service and the conduct of the petitioner during his service tenure has been satisfactory, he may not be proceeded against for such conviction. In this connection, petitioner placed reliance on the judgment of Kerala High Court in the case of Krishnan Kutti vs. Senior Superintendent of Post Offices Ernakulam and Others, reported in 1975 All India Services Law Journal 749 paragraph-10. The authorities, however, did not accept the cause shown by the petitioner and passed the impugned dismissal order dated 16.7.2005, which has also been confirmed in appeal under order bearing Memo No. 214 dated 15.2.2006, Annexure-2. Perusal of appellate order Annexure-2, however, indicates that the appellate authority non suited the petitioner on the ground that had the petitioner informed the appointing authority at the time of his appointment on 5.11.1986 that he is accused in Kako P.S. Case No. 64 dated 19.7.1981, he may not have secured appointment and occasion to dismiss him from Government service after conviction may not have arisen. It is submitted by the counsel for the petitioner that at the time of his appointment petitioner was never asked to inform the authorities about his antecedent and he had no occasion to inform the authorities at the time of his appointment i.e. 5.11.1986 about pendency of Kako P.S. Case No. 64 dated 19.7.1981 against him. In this connection learned counsel for the petitioner has further relied on the judgment of the Hon'ble Supreme Court in the case of Shankar Dass Vs. Union of India (UOI) and Another, as also on the judgment of the Hon'ble Supreme Court in the case of Punjab Water Supply Sewerage Board and Another Vs. Ram Sajivan and Another, and

submitted that before dismissing the delinquent employee on the ground of conviction the disciplinary authority is required to take into account the entire conduct of the delinquent employee, the gravity of the offence committed by him, impact which his overt act is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and submitted that the occurrence for which petitioner has been convicted took place prior to his entry in Government service that too without any premeditation on the spur of the moment in regard to irrigation dispute between the family members of the petitioner and the informant and will hardly have any impact on the administration in view of the admission by the authorities themselves in the charge sheet that conduct of the petitioner after his entry in Government service has been satisfactory.

5. Counsel for the State has defended the impugned, dismissal, appellate order on the ground that it is the duty of every applicant seeking appointment to inform the authorities about his antecedent including the criminal cases pending against him. In this connection, learned counsel for the State relied on the averments made in paragraph 15 of the counter affidavit, which is in reply to paragraph-13 of the writ petition wherein petitioner has stated that at the time of his appointment information about his antecedent including the factum of his being accused in any criminal case was never asked for. In reply to the aforesaid statement made in paragraph-13 of the writ petition, deponent of the counter affidavit has stated that petitioner concealed his criminal antecedent at the time of his appointment, which is also a criminal offence. At the time of appointment of the petitioner or during conduction of the selection process information about antecedent including the fact of being accused in criminal case was never asked for as copy of the employment notice asking for such information has not been annexed with the counter affidavit. In the circumstances, it is difficult for me to accept the submission that petitioner suppressed information about his antecedent at the time of his appointment or while participating in the selection process. Charge sheet, Annexure-7 also does not indicate that petitioner was charged with suppression of any material information at the time of his appointment. In my view, it is not required of the petitioner to inform the authorities suo motu about his antecedent when such information is not being asked for in the employment notice. Petitioner was convicted in connection with occurrence which took place with regard to irrigation of the agricultural land without any pre-meditation at the spur of the moment and that too much prior to the petitioner entering the Government service, in my opinion, therefore, conviction though recorded after petitioner entered the Government service should not be relied upon to dismiss the petitioner from service as the charge sheet, itself recites that the conduct of the petitioner during his service tenure has been satisfactory.

6. Accordingly, I set aside the impugned dismissal, appellate order dated 16.7.2005, 15.2.2006, Annexures-1, 2 as also the order by which request of the petitioner to review the two orders was rejected under communication dated

29.12.2006, Annexure-3 with direction to the authorities to reinstate the petitioner with all consequential benefits including the arrears of salary for the period of dismissal i.e. between 16.7.2005 till the date of this order. The writ application is, accordingly, allowed.