(2003) 09 JH CK 0115

In the Jharkhand High Court

Case No : CWJC No. 1554 of 1999 (R)

Shyam Sunder Chaudhary APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43
Civil Services (Classification, Control and Appeal) Rules — Rule 49A
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 438

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : N.P. Singh, for the Appellant; Pradeep Modi, GP No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—In this writ application, the petitioner has prayed for quashing the order dated 14.9.1996 (Annexure 1) issued by respondent No. 2, whereby and whereunder, he was informed that in view of the reports received against him in relation to irregularities, it had been decided to initiate departmental proceedings and, accordingly, he was being put under suspension under the provisions of Rule 49-A (1) of the Civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter referred to as "the Rules"). The petitioner has further prayed for quashing the departmental proceedings which was initiated pursuant to the resolution dated 30.10.1996 (Annexure 2) issued by respondent No. 3. The petitioner has also prayed for quashing the charge sheet dated 21.1.1997 as contained in Annexure 3 to the writ application. The petitioner has also prayed for quashing the second show cause notice dated 1.6.1998 as contained in Annexure 4 which was issued by respondent No. 3. The additional prayers made in the writ petition are that the final order of punishment dated 3.5.1999 (Annexure 5) withholding 5% of the amount of pension and holding that the petitioner was not entitled to any payment during the period of suspension i.e.

14.9.1996 to 31.10.1996 save and except the subsistence allowance, be also quashed by this Court. The petitioner further prays for a direction upon the respondents to :--

(a) Pay retrial benefits including full pension, gratuity, Group Insurance, Leave Encashment in relation to the remaining leaves which were due on the date of retirement. Full salary during the period of suspension together with 10% of pay as interim relief from April, 1995 to October, 1996.

(b) For payment of compound interest at the rate of 30% per annum on the following amounts :--

(i) Monthly pension from November, 1996.

(ii) Amount of Gratuity for 16.5 months with effect from 1.11.1996.

(iii) Leave Encashment for 8 months with effect from 1.11.1996.

(iv) Group Insurance with effect from 1.11.1996.

(v) Interim relief with effect from 1.4.1995.

(vi) he remaining unpaid salary during the period 14.9.1996 to 31.10.1996 in addition to subsistence allowance already paid or to make payment of the subsistence allowance for the entire period of suspension with effect from 1.11.1996 to 4.3.1998 with interest thereon.

2. From the pleading made in the writ application, the following facts appear :--

The petitioner was appointed on 12.5.1958 and while he was posted in the District Agriculture Office at Ranchi, he was put under suspension by order dated 14.9.1996 as contained in Annexure 1. On 30.10.1996 the Joint Secretary, Department of Agriculture, Government of Bihar issued a resolution wherein it was, inter alia, resolved that the Governor of Bihar in exercise of his power under Rule 55 of the Rules, had decided to initiate departmental proceedings and, accordingly, letter was ordered to be issued asking the petitioner to show cause. On the next day i.e. on 31.10.1996 the petitioner retired. According to the petitioner, the aforementioned resolution dated 30.10.1996 (Annexure 2) was served upon him a fortnight after his retirement i.e. on 18.11.1996. Having received the aforementioned resolution, the petitioner filed his explanation on 21.11.1996 vide Annexure 7. Therefore it appears that the respondents were not satisfied and accordingly the charge sheet dated 21.1.1997 (Annexure 3) was served on the petitioner. Upon perusal of the charges levelled against the petitioner, it would appear that the charge sheet consisted of charges of financial irregularities and towards the end of the charge sheet, documents said to have been enclosed were the letters dated 21.5.1994, 16.6.1994 and 16.7.1994 which were in relation to charge Nos. 1 to 7. However, according to the petitioner, the aforementioned documents were not included in the charge sheet but they were given to him later on vide letter dated 28.1.1997 (Annexure 9). From perusal of Annexure 9, it appears that the letters dated 21.5.1994, 16.6.1994 and

16.7.1994 were sent along with forwarding letter 28.1.1997. The aforementioned charge sheet was sent to the petitioner vide letter dated 21.1.1997 (Annexure 7) and the petitioner filed his explanation on 4.2.1997 vide Annexure 8 denying the charges. In the meantime, the petitioner, feeling himself aggrieved by the order of suspension, also filed a writ application before the then Ranchi Bench of the Patna High Court vide CWJC No. 3377 of 1996 (R) and by order dated 6.3.1997 (Annexure 6), the writ application was dismissed. From a bare perusal of the aforementioned order dated 6.3.1997, it appears that the grievance of the petitioner was that till date the charge had not been served upon him and since the petitioner had already retired, the order of suspension had therefore become inoperative. It appears that the aforementioned grievance of the petitioner before the earlier writ Court was not correct because the order was passed on 6.3.1997 whereas the charge sheet (Annexure 3) was issued vide letter dated 21.1.1997 and the enclosures thereto were issued by letter dated 28.1.1997 (Annexure 9). In any event, the argument to the effect that there having been no specific order under Rule 43 (b) of the Bihar Pension Rules, the proceedings are not maintainable, was rightly not accepted by the earlier Court for the aforementioned reasons because the petitioner had already been put under suspension on 14.9.1996 i.e. prior to his retirement and the resolution to proceed against him was issued on 30.10.1996 i.e. again prior to his retirement and consequently in view of the "Explanations" given under the provisions of Rule 43 (b) of the Bihar Pension Rules, the proceedings must be deemed to have commenced. Moreover by reason of the order dated 6.3.1997 passed by the earlier writ Court, the respondents were directed to serve the memorandum of charges upon the petitioner forthwith. It appears that the attention of the Court was not drawn to the effect that the charge sheet had already been drawn and served almost two months prior to the aforementioned order. At paragraph 12, the petitioner has stated that the Conducting Officer thereafter proceeded and fixed the date of hearing on 14.3.1997 but the letter by which he was informed that the enquiry was going to be held on that day i.e. on 14.3.1997 was actually delivered to the petitioner on 8.4.1997 i.e. after expiry of the said date. The petitioner has further stated that on 15.4.1997 he adequately replied by Annexure 11 stating that he had received the said letter on 8.4.1997. From the explanation given by the petitioner vide Annexure 11, it appears that the petitioner went on raising objections after objections and that too, on technicalities but did not, in fact, give explanation in relation to the charge sheet. Consequently on 11.6.1996 (Annexure 12), the respondents issued a letter informing the petitioner that he had not yet filed any cause nor was he making himself present in the enquiry and was repeatedly delaying the matter on one pretext or the other and therefore they gave him a further opportunity of filing a detailed cause within ten days so that a fresh date for personal hearing etc. could be fixed. Upon receiving the aforementioned letter, the petitioner sent his reply on 12.7.1997 vide Annexure 13. It appears that thereafter an order was passed on 6.2.1998 by which the suspension of the petitioner was revoked with effect from 1.11.1996 considering the fact that he had already superannuated on

31.10.1996. Thereafter on 1.6.1998, a letter was issued by the Joint Secretary of the Government to the petitioner informing him that the enquiry report had been received and upon consideration thereof, the Government had decided that for committing financial irregularities 25% from his pension should be deducted, a second show cause notice was given by the Joint Secretary to the Government vide letter dated 1.6.1998 as contained in Annexure 4. Thereafter by letter dated 3.5.1999, a notification (Annexure 5) was issued wherein after considering all the relevant matters, the following punishment were inflicted upon the petitioner :--

(a) Deduction of 5% from the pension;

(b) The petitioner would not be entitled to any amount for the period during which he remained under suspension save and except the subsistence allowance but that period shall be counted for all other purposes.

3. From the pleading in the writ application, it is apparent that there were reports and allegations of corruption and irregularities, as a result whereof, the petitioner was proceeded against departmentally. From the pleadings it further appears that the proceedings were conducted in a regular manner and the petitioner has not been able to establish any mala fide or perversity in the manner in which the proceedings were conducted, it may be true that one notice (Annexure 9) from the Enquiry Officer was received by the petitioner after expiry of the date fixed for enquiry but that by itself can hardly be said to prejudice the petitioner because even thereafter, the proceedings continued and the petitioner went on raising technical objections as a result whereof on 11.6.1997, the respondents again gave him an opportunity to file his cause. That apart, the petitioner was admittedly put under suspension on 14.9.1996 and on 30.10.1996 a resolution was already issued informing the petitioner that the Government had decided to proceed against him departmentally. There was nothing wrong therefore in continuing with the proceedings and the Government also correctly revoked the order of suspension from the date he superannuated i.e. with effect from 31.10.1996 itself which is evident from Annexure 14 itself. The procedure adopted in this case therefore is not at all irregular.

4. The argument of the petitioner that the respondents having not proceeded under the provisions of. Rule 43 (b) of the Bihar Pension Rules, 1950 had no authority to deduct pension. This argument is totally misconceived because apart from giving power to the State Government, to withhold or withdraw pension or part of it, whether permanent or for specified period, under the provisions of Rule 43 (b) of the Bihar Pension Rules, 1950, subject to the pensioner having been found in a departmental proceeding to have been guilty of misconduct, the Rule also contains an Explanation and the said Explanation clearly specifies that a departmental proceeding shall be deemed to have been instituted when the charges which are framed against a pensioner are issued to him or if the Government Servant has been placed under suspension from the earlier date, then from that date. In the instant ease, the petitioner was put under suspension

on 14.9.1996 i.e. prior to his retirement and he retired on 31.10.1996 and therefore in view of the Explanation appended to Rule 43 (b) of the Bihar Pension Rules, 1950, the departmental proceedings under the said Rule i.e. Rule 43 (b) would be deemed to have been instituted on the date he was put under suspension. Moreover after having been put under suspension with effect from 14.9.1996, charge sheet was issued whereafter the petitioner submitted his cause and participated in the departmental proceedings. The enquiry officer submitted his report on 23.7.1997. Upon receipt of the enquiry report, a second show cause notice was issued to the petitioner but he failed to reply and continued to raise technical objections and avoided giving specific reply to the allegations. On 13.8.1998 the petitioner was again reminded by Annexure D appended to the supplementary counter affidavit that he must file a reply to the second show cause but the petitioner did not do the needful. Thereafter on 21.1.1998 the respondents again sent a reminder relating to non-receipt of explanation to the second show cause vide Annexure E. Thereafter the petitioner submitted his explanation and that was duly considered and final order was passed.

5. From the pleadings as also from the records, this Court is of the opinion that the final order of punishment is neither shocking nor disproportionate considering the charges levelled against the petitioner which were proved in a regularly constituted departmental proceeding. The High Court exercising jurisdiction of scope of judicial review under Article 226 of the Constitution will not act as an appellate authority on findings of fact recorded in a departmental proceedings unless the same are either perverse, mala fide or patently illegal and unless it appears to the Court that the punishment is shocking/disproportionate. Reference for the aforementioned proposition may be had from the judgment of the Hon''ble Supreme Court of India in the case of Mithilesh Singh Vs. Union of India (UOI) and Others, , para 9 and also a judgment of the Division Bench of the then Ranchi Bench of the Patna High Court in the case of Prem Shankar v. Birla Institute of Technology and Ors. (1995) 1 PLJR 650.

6. For the foregoing reasons, therefore, this Court holds that there is no scope for interference by this Court in this case and, accordingly, the writ petition is dismissed. There shall, however, be no order as to costs.

