
(1999) 09 PAT CK 0137
In the Patna High Court
Case No : C.W.J.C. No. 1524 of 1990

S.K. Verma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Citation : (2000) 1 BLJR 76 : (2000) 1 PLJR 116

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—This writ petition has been filed for quashing the order of suspension dated 22nd March, 1990 passed against the petitioner as well as departmental proceeding which was initiated against the petitioner. During the pendency of this writ petition, the departmental inquiry was concluded, and final order was also passed. The petitioner by filing amendment petition challenged those orders also in this proceeding.

2. Prior to this writ petition another writ petition was filed by the petitioner being C.W.J.C. No. 2390 of 1990 challenging the suspension order. While hearing that writ petition (C.W.J.C. No. 2390 of 1990), the learned Division Bench of this Court recorded the submission of the petitioner that the suspension order was passed on the basis of a report made by one Sri Hari Sharan Singh, Superintending Engineer, who was a member of Flying Squad. It was also recorded that Sri Hari Sharan Singh had engaged about 1100 persons on muster roll in an illegal manner and huge payments were made to such persons. The petitioner took steps for removing those 1100, persons from muster roll and stopped payment to them. This annoyed said Sri Hari Sharan Singh and he being a member of Flying Squad, at his instance, the petitioner was put under suspension. It was also recorded that ultimately, the order of the petitioner removing those persons from muster roll was challenged before the Supreme Court but the Supreme Court did not interfere in the matter,

3. Learned Division Bench of this Court disposed of the aforesaid writ petition by order dated 30th July, 1990 with the following direction:

However, we direct the Secretary, Department of Water Resources, Government of Bihar, to look into the aforesaid allegations made on behalf of the petitioner. If the petitioner is able to substantiate the aforesaid allegation, then it need not be said that the order of suspension should be withdrawn as early as possible. The inquiry by the Secretary, Department of Water Resources in respect of the allegations made on behalf of the petitioner, should preferably be concluded within two months from the date of production of this order.

However, in the meantime, the departmental proceeding, which has been initiated against the petitioner, should proceed and be concluded preferably within four months from the date of production of this order.

With the aforesaid direction, this writ application is disposed of.

Let a copy of this order be given to Junior Counsel to the Advocate-General for communication.

4. During the pendency of the present writ petition, according to the petitioner, departmental proceeding was concluded and inquiry report was made without giving the petitioner sufficient opportunity of hearing in the same and without directing the said Sri Hari Sharan Singh to appear in the said proceeding for cross-examination.

5. The petitioner's case is that the said request for cross-examination of Sri Hari Sharan Singh made by the petitioner was turned down.

6. When the writ petition was filed a Division Bench of this Court vide order dated 24-4-1991 recorded that though the order of suspension has been passed on 22nd March, 1990 and a period of one year has expired but the subsistence allowance has not been paid to the petitioner even for a single month. The Division Bench of this Court by its order dated 24-4-1991 directed the Secretary, Water Resources Department (respondent No. 1) to see that the amount of subsistence allowance from 22-3-1990 up to date is paid to the petitioner within a period of one month from the date of receipt of production of a copy of this order,

7. Thereafter, the case appeared before the different Division Benches of this Court from time to time and vide order dated 14-11-1991 a Division Bench consisting of Hon'ble the Chief Justice and the Hon'ble Mr. Justice S. Hoda passed an order that a copy of the inquiry report be furnished to the petitioner and the petitioner shall be entitled to make a representation in respect of the said report and the appropriate disciplinary authority shall pass a final order on such inquiry report after taking into consideration the representation filed by the petitioner. It is made clear that the final order must be a speaking order. It was also made clear that at the time of hearing of the admission of this application, the question of validity of the inquiry report, suspension order and the ultimate

action sought to be taken in the matter shall be examined.

8. Ultimately by order dated 26-6-1995, this writ petition was admitted by another Division Bench of this Court. The Division Bench of this Court was told that the final order of dismissal had been passed against the petitioner. But, the Division Bench made it clear that the writ petition has been admitted for considering the legality of the order of dismissal that has been passed.

9. Therefore, in this writ petition, the learned Counsel appearing for the petitioner has challenged the departmental proceeding and also the final order.

10. Since the operation of the dismissal order had been stayed by the Division Bench vide its order dated 14-11-1991 the final order had not. been given effect to until further orders of this Court. In the meantime, the petitioner has retired from the service in the month of January, 1997.

11. Appearing for the petitioner learned Counsel has assailed the inquiry proceeding on various grounds and assailed the same on the ground of malafide also. But the main ground on which this writ petition can be allowed is that in the course of departmental inquiry, no witness was examined. This has been admitted by the learned Counsel for the State respondents also. Learned Counsel for the petitioner relying on the said fact that without producing any witness the inquiry report has been submitted by the respondent has urged that the inquiry proceeding has been a perverse one specially when the repeated demands were made by the petitioner for the production of two witnesses for his cross-examination.

12. Learned Counsel for the petitioner said that the inquiry sittings were held only on three days i.e. on 10-10-1990, 6-11-1990 and 30-11-1990 but on none of those dates any witness was examined. Learned Counsel for the petitioner further submitted that in order to comply with the principles of natural justice, the petitioner's demand for production of Sri Hari Sharan Singh, the then Superintending Engineer should have been acceded to. Only on the last day i.e. on 3-11-1990 Sri Hari Sharan Singh was directed to be present but he was not present on that day and the inquiry was closed. The petitioner got no chance to cross-examine the said witness at whose instance the report of the Flying Squad was submitted.

13. So far as the report of the Flying Squad is concerned, the learned Counsel for the petitioner submitted that the said Flying Squad was headed by the said Sri Hari Sharan Singh. The report submitted by the Flying Squad was found unacceptable and the same was examined at the level of the Government and the Government has decided to hold another inquiry. In support of the fact that the said report of the Flying Squad is a fake one, learned Counsel has relied on the judgment proved by a learned Division Bench of this Court dated 17-11-1992 in C.W.J.C. No. 2601 of 1992 and other analogous cases. In the said judgment, the report of the flying squad has been considered and the Division Bench has come to the conclusion that the report of the flying squad cannot be relied on for

the purpose of holding inquiry against the Officers whose cases were heard by the said Division Bench. As many as eight writ petitions were decided in the aforesaid judgment. Another infirmity of the said report of the flying squad mentioned in the said judgment is that the persons heading that squad was never allowed to be produced for cross-examination by the inquiry Officer and the inquiry report was submitted without examination of any witness.

14. Learned Counsel for the petitioner further submitted that the basis of the respondent authorities against him is clear even from the charge-sheet itself. He has drawn the attention of the Court of the charge-sheet which is Annexure-7 to the writ application. The striking feature of the charge-sheet is that the charge-sheet gives a prejudged finding of guilt of the petitioner.

15. This Court on consideration of paragraph 9 of the charge-sheet comes to the conclusion that at the stage of charge-sheet itself bias against the petitioner has been expressed.

16. In view of the fact that during the inquiry no witness was examined, this Court holds that the charges against the petitioner cannot be said to have been proved. It is a well known principle that at the stage of inquiry the petitioner is entitled to be given a reasonable opportunity to cross-examine the witnesses who are produced to prove the charges. The petitioner also has a right to adduce evidence by producing witness. It is well known that at this stage provision of the Indian Evidence Act does not apply. But, the substantial principles of Evidence Act are to be observed in a departmental enquiry also.

17. In a decision of the Constitution Bench judgment of the Supreme Court in the case of Gopal Narain Vs. State of Uttar Pradesh and Another, , it has been held as follows:

It may be that the technical rules which govern criminal trials on Courts may not necessarily apply to disciplinary proceedings, but nevertheless the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary inquiries held under the statutory rules.

18. In a recent judgment in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, , the same principles have been reiterated. Following the same, it cannot be held that in the instant case, there has been fair inquiry against the petitioner. In the absence of a fair inquiry proceeding the dismissal order passed against the petitioner cannot be sustained. So this Court quashed the inquiry report which is at Annexure-23 as also the final order of dismissal as contained in Annexure-26/A.

19. Learned Counsel for the petitioner raised only objection that in the instant case the final order of dismissal is appealable and the petitioner has not filed the appeal. In the absence of appeal, this writ petition cannot be entertained and should be dismissed.

20. It is well known that the jurisdiction of this Court is not barred to entertain a writ petition when in an appropriate case, the statutory remedy of appeal has not been exhausted. Where the complaint is that the principles of natural justice have been violated, as in this case, the writ petition can be entertained even if the statutory remedy has not been exhausted.

21. Reliance in this connection may be made to the judgment of the Supreme Court in the case of State of U.P. v. Mohammand Nooh reported in AIR 1958 S.C. 86. Delivering the judgment of the Court, Chief Justice S.R. Das (as His Lordship then was) made it clear that the writ Court can interfere in a situation "where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior Court or Tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or Tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offend the Superior Court's sense of fair play the Superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or Tribunal of first instance, even if an appeal to another inferior Court or Tribunal was available and recourse was not had to it."

22. Following the aforesaid principle, this Court has no hesitation in allowing the writ petition and quashing the charge-sheet, inquiry report as also the final order of punishment. Since this Court quashes the charge-sheet on the ground of bias of the respondent authority and the petitioner has also retired from service in January 1997, no purpose would be served by remanding the case to authorities concerned for a fresh inquiry. Thus, this writ petition succeeds.

23. There is not question of reinstatement as the petitioner has already retired. In that view of the matter, this Court directs that the petitioner should be given his due to which he may be entitled to as a result of quashing of departmental proceeding and all orders passed in it.

24. It appears that the petitioner was put under suspension by the order dated 23rd March, 1990 which merged with the dismissal order which stands quashed. So the respondents must pay his full salary and allowances from the date of suspension of the petitioner till the date of his superannuation after deducting the amount of subsistence allowance if any paid to the petitioner. The petitioner will be paid the aforesaid salary and allowances within a period of three months from the date of receipt/production of a copy of this order. This writ petition is accordingly allowed to the extent indicated above. There will be no order as to cost.