

(2008) 07 PAT CK 0046
In the Patna High Court
Case No : C.R. No"s. 48 and 1129 of 2001

Smt. Shashi Singh and Another

APPELLANT

Vs

Mata Bhagwati and Others

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 11, Order 7 Rule 11(d), 115
Succession Act, 1925 — Section 213

Citation : (2009) 1 PLJR 668

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Sachidanand Choudhary, for the Appellant; Sukumar Sinha and Abinash Kumar, for the Respondent

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Heard Learned Counsel for the petitioner and the State. Petitioner is aggrieved by the office order No. 337 dated 10.9.2003, Annexure-14, whereunder after conclusion of the departmental proceeding, he has been punished with the stoppage of two annual increments with cumulative effect and no payment of salary beyond the subsistence allowance paid during the period of suspension. Period of suspension, however, has been directed to be counted for the purposes of calculating pension. He is also aggrieved by the order dated 30.12.2006, Annexure-15 passed in Service Case No. 6 of 2006 by the Member, Board of Revenue, Bihar, whereunder the appeal filed by the petitioner against the order dated 10.9.2003, Annexure-14 has been rejected.

2. From the enquiry report, Annexure-12, it appears that the petitioner was charged with the misconduct of the delaying the submission of file relating to Raghunath Prasad Singh, which led to payment of interest by the State Government to Raghunath Prasad Singh. In this connection, it is pointed out that petitioner was never given the benefit of perusing the enquiry report holding him

guilty of causing delay in submission of file prior to issue of the punishment order so as to enable him to refute the findings of the Enquiry Officer before the Disciplinary Authority.

3. It is submitted on behalf of the petitioner that as petitioner had no access to the findings recorded by the Enquiry Officer, he could not refute the findings of the Enquiry Officer before the Disciplinary Authority ever before punishment order dated 10.9.2003, Annexure-14 was passed. Even for filing appeal against the said order, he required to peruse the enquiry report but the same was not made available and the appeal was also filed by the petitioner without perusing the findings recorded in the enquiry report. It is further submitted on behalf of the petitioner that as petitioner has no opportunity to read the findings recorded by the Enquiry Officer, he has been seriously prejudiced and the two impugned orders are required to be set aside on the ground of failure of the authorities to serve the enquiry report on the petitioner. Aforesaid submission has been made in paragraph 23 of the writ petition.

4. This writ petition was filed on 5.4.2007 and remained pending for more than four years, but the authorities have not chosen to file any counter affidavit in ? the matter refuting the statement made in paragraph-23 of the writ petition. State Counsel, A.C. to G.P.-17, however, states that counter affidavit was filed in the matter. In support of such fact Learned Counsel for the State is ready to furnish oath number and the date on which the counter was affirmed by the deponent. With reference to oath number and date of oath, it would be impossible for this Court to trace the counter affidavit unless date of filing of the counter is made available. To avoid the aforesaid controversy the deponent of the counter affidavit should not only take the oath number with date of affirmation but should also request the law officer concerned or his associate counsel or his registered clerk to grant him a certificate that the copy of the counter affidavit has already been served on the counsel for the petitioner and has also been filed in the registry of the Court with date of filing.

5. In the instant case, statement made in paragraph-23 of the writ petition has not been disputed. In the circumstances, this Court has no option but to accept that petitioner was not given the copy of the enquiry report before passing of the impugned punishment order as also before filing of the appeal.

6. Before filing the writ petition, petitioner procured a copy of the enquiry report from his own sources, which is annexed with the writ petition and is contained in Annexure-12. In the circumstances, petitioner having procured the enquiry report is aware about the findings recorded against him.

7. Accordingly, while setting aside the punishment order dated 10.9.2003, Annexure-14 and the appellate order dated 30.12.2006, Annexure-15, I direct the petitioner to file his second show cause reply before the Disciplinary Authority, who should consider the same and pass appropriate order in the matter in accordance with law. The writ petition is, accordingly, disposed of.