
(1992) 05 PAT CK 0020

In the Patna High Court

Case No : C.W.J.C. No's. 6167 and 6182 of 1990

S.P. Tiwary and Ram Das Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-05-1992

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43B

Citation : (1993) 41 BLJR 742 : (1993) 2 LLJ 1163 : (1993) 2 LLJ 1162

Hon'ble Judges : S.K. Chattopadhyaya, J;B.P. Singh, J

Bench : Division Bench

Advocate : S.J. Mukhopadhyaya, Shivendra Kishore and Ambar Nath Banerjee, for the Appellant; Ram Suresh Roy and K.N. Jain, for the Respondent

Judgement

B.P. Singh, J.—Both these writ petitions were filed on September 17, 1990 for quashing of the disciplinary proceedings initiated against the petitioners pursuant to the resolution dated August 1, 1990 (Annexure-1). It is further prayed that the respondents be directed to consider the cases of the petitioners for promotion to the higher post of Senior Joint Commissioner/Additional Commissioner, Commercial Taxes, through the Departmental Promotion Committee which was to meet on September 19, 1990. Both the petitioners at the relevant time were Joint Commissioners, and it is their case that with a view to victimise them and to deprive them of the promotion legally due to them, the instant proceedings were drawn up mala fide, and after considerable delay.

2. In C.W.J.C.No. 6167 of 1990 S.P.Tiwary is the petitioner. Annexure-1, which has been impugned, is the resolution dated August 1, 1990, whereby departmental proceeding was initiated against the petitioner. It appears from the Schedule to Annexure-1 that the petitioner was charged of having not followed the prescribed procedure in the matter of appointments, and to have appointed four Counter Clerks against the rules and despite the fact that he had no power of appointments. In making the appointments the petitioner did not ask for names from the Employment Exchange, did not follow the rules relating to

reservation, and made the appointments without holding a test to judge the standard of the candidates appointed. It is not necessary to refer to the averments in the writ petition which were made with a view to challenge the impugned order, because admittedly the petitioner has been superannuated from service on January 31, 1991. It was, therefore, submitted that in any event, the petitioner having been superannuated from service, the disciplinary proceeding cannot be continued since no final order was passed while the petitioner was in service. As earlier observed, the case of the petitioner is that the appointments were made in accordance with the rules and no illegality was committed. The appointments were made as far back as in the year 1981. The persons so appointed have been continued in service. Though the appointments made were with the knowledge of the superior authorities, and in fact with their approval, no action was taken. It is, therefore, submitted that only with a view to deprive the petitioner of his chance of promotion, the instant proceeding was initiated.

It also appears that an enquiry officer was appointed. The report of the enquiry officer has been annexed to the counter affidavit as Annexure-A. The enquiry officer has found only one of the charges partially proved. He has held that none of the other charges has been proved and all that has been proved is that in making the appointments the petitioner did not literally follow the rules relating to reservation. It was found that when candidate belonging to reserved category with the requisite qualification was available for appointment, the petitioner should have first obtained appropriate orders for appointing a person from the general category against the post. The enquiring officer has further held that the contravention of this rule was not mala fide nor did the petitioner act with any bad intention. It is admitted that the disciplinary authority has passed no order after the submission of the enquiry report. In the writ petition itself it was stated that the petitioner was to superannuate in about four months time i.e., on January 31, 1991. In the rejoinder affidavit it is stated that the petitioner has been since superannuated with effect from that date. It is not disputed before me that no order has been passed against the petitioner imposing any punishment pursuant to the report of the enquiring officer.

3. The facts of C.W.J.C. No.6182 of 1990 are also similar and in that case as well the charge was that the petitioner had appointed one Clerk in breach of the prescribed procedure and the rules. Petitioner Ram Das Sinha, was also a Joint Commissioner and was due for promotion when the departmental proceeding was initiated. The appointment was made as far back as in the year 1980 and the proceeding was initiated only to defeat the claim of the petitioner for promotion. Annexure-1, the resolution for initiation of a disciplinary proceeding in this case, was also made on the August 1, 1990 as in the other case. In this case as well an enquiring officer was appointed, but the enquiring officer has exonerated the petitioner of all the charges levelled against him. Admittedly, thereafter no order has been passed by the disciplinary authority. It is further stated that the petitioner superannuated on November 30, 1990. These facts are not in dispute.

4. Having regard to the fact that the petitioners have been superannuated from service, it is not necessary to go into the question as to whether the initiation of the proceedings were mala fide and misconceived. It is well settled that the power of disciplinary control is a necessary concomitant of employer-employee or master-servant relationship. The disciplinary control of the employer or master continues till such time as the employee is under his employment. Once that relationship ceases to exist, the power of disciplinary control also comes to an end unless there are rules to the contrary. Apart from other reasons, an employee who is no more in the employment of the employer cannot be punished by the employer, because it may not be possible to impose any punishment against him. Obviously, one who is not in employment cannot be demoted in rank, nor can his increment be stopped. He cannot be suspended, nor can he be dismissed. It is, therefore, well settled that the employer can exercise disciplinary control over his employee only so long as the employee is under his employment. That power cannot be exercised after the employee ceases to be his employee in the absence of rules to that effect. I do not consider it necessary to refer to the several decisions which have settled the law on this subject. No rule has been shown to us which permits the continuance of disciplinary proceeding even after superannuation.

5. In the instant cases it is not in dispute that the petitioners were superannuated from service after submission of the enquiry reports, and before any order was passed by the disciplinary authority. In one case the enquiring officer has completely exonerated the petitioner of all the charges levelled against him. In the other case only one of the charges has been partially proved, and the finding of the enquiring officer is that the breach of the rule is of technical nature and the action of the petitioner was neither mala fide nor motivated by any bad reason. In these circumstances, I must hold that the respondents cannot proceed to pass any order imposing any punishment against the petitioners. That being so, the proceedings must be quashed. I, accordingly, quash the disciplinary proceedings initiated against the petitioners pursuant to Annexure-1 in both the writ petitions.

6. Counsel for the State contends that even if it is held that no disciplinary proceeding can be continued against an employee, who has been superannuated from service, under the Bihar Pension Rules there were provisions for withholding part or the whole of the pension payable to a delinquent employee whose actions have caused some financial loss to the State. It is not necessary for me to go into that question. It is true that under the Bihar Pension Rules, subject to certain conditions the pension of a retired Government employee may be curtailed under Rule 43-B, the proceeding has to be initiated in a certain manner and subject to certain conditions. If the State proposes to take any action against the petitioners under the provisions of the Bihar Pension Rules, we make it clear that quashing of the disciplinary proceedings will not stand in the way of the Government, and it may take such action as it may be advised under the Bihar Pension Rules. It will also be open to the petitioners to challenge such action in

accordance with law. I express no opinion on the question as to whether such a proceeding can or cannot be initiated against the petitioners under the provisions of the Bihar Pension Rules. Moreover, it appears that the petitioner in C.W. J.C. No. 6167 of 1900 has filed another writ petition before this Court being aggrieved by the fact that his retirement benefits such as pension, gratuity etc. were not being finalised by the State Government.

7. I, therefore, quash Annexure-I and the proceedings taken pursuant thereto in both the writ petitions. That, however, will not preclude the State Government from taking such action against the petitioners as it may be advised under the provisions of the Bihar Pension Rules. It will equally be open to the petitioners to challenge such action, if so advised, in accordance with law. These writ petitions are allowed to the extent indicated above. There will be no order as to costs

S.K. Chattopadhyaya, J.

8. I agree.