

(2003) 04 PAT CK 0124
In the Patna High Court
Case No : L.P.A. No. 727 of 1996

Sri Nageshwar Prasad Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 49

Citation : (2003) 2 PLJR 813

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : N.K. Sinha and A.K. Sinha, for the Appellant; A.B. Sinha, for the Respondent

Judgement

1. The only issue in the present appeal is to the effect that the order on the writ petition, C.W.J.C. No. 2232 of 1995-Sri Nageshwar Prasad Sinha v. The State of Bihar and Ors. needs clarification. It has been pointed out to the Court that under the Civil Services (Classification, Control and Appeal), Rules, 1930 of the Government of Bihar, Department of Personnel, in context, the punishment which has been awarded under Rule 49 in reference to sub Clause (ii) of Rule 49 is not simultaneous punishment as withholding increment and withholding promotion both. The contention is that the State-Respondents, on the pleadings on record, of the writ petition has attempted to justify the circumstances of punishment awarded by withholding of increment and promotion. The contention on behalf of the Appellant is that the word used in Sub-clause (ii), in context, is "or". It is explained by learned Counsel that if by some mis-understanding or otherwise in the bazar publication the word "or" may have been missing then it has taken effect to his detriment in so far as he is concerned. The Government publication was seen by the Court. The relevant clause reads: (ii) "withholding of increments or promotion, including stoppage at an efficiency bar". In the market publication instead of word "or" the word "of" has been used. This is clearly an error, a printer's devji so to speak.

2. With this explained the punishment now could be in its variation either on withholding of the increment or promotion. It cannot be both

3. At this, learned Counsel appearing for the State Mr. Ajay Bihari Sinha, S.C. 10 interjected to submit that he had instructions to state that in so far as punishment of withholding increments is concerned, it has been withdrawn. Learned Counsel for the Appellant submitted that he has no knowledge of this, nor any such information is on the record. Learned Counsel for the State, thus submitted that if the matter be adjourned, he will place the record and file the government order by which the punishment against increment had been withdrawn. The adjournment was permitted.

4. Today, an affidavit has been filed. It is contended that punishment of increment is withdrawn. So be it. The balance which remains is on withholding of promotion for three years in the context of the present matter.

5. But the Court has reservations of the manner in which information has been presented. The Court would not know the manner in which the record of the State was corrected. The affidavit itself says that the file is not available. What has been placed before the Court is supposed to be a noting. There is no office order as government order in formality of government business. This is a very shabby way of presenting the State case. Clearly it was half way house to withhold information that the formality of issuing a government order was never made. This is arbitrariness.

6. However, in so far as the Petitioner-Appellant is concerned, he is being informed today that punishment of increment stood withdrawn. Thus, the Court being called upon to interpret the situation whether the word "or" or for that matter of was there does not arise. That was clearly an error on State record. The only punishment which remains as accepted on behalf of the State is withholding of the promotion only for three years. The record is so certified.

7. The appeal succeeds with costs throughout.