

(1987) 05 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1676 of 1986

Sri Nil Madhav Jha.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-05-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1987) PLJR 998

Hon'ble Judges : U.P. Singh, J;N.P. Singh, J

Bench : Division Bench

Advocate : J.N.P. Verma and Ajit Kumar Sinha, for the Appellant; Kamlapati Singh, G. P. 5 with Miss. Sangita Das Gupta, J.C. to G.P. 5, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner has filed this application for quashing a part of order dated 11.10.1984 and order dated 10.10.1985 issued by the Director-Cum-Inspector General of Police, Bihar, putting the petitioner under suspension retrospectively and then compulsorily retiring the petitioner from the service of the State Government. The petitioner was appointed as a Lower Division Assistant in the year 1948. In the year 1950, he was transferred to the Office of the Deputy Inspector General of Police, Eastern Range, Bhagalpur. On 31.3.1959, the petitioner was put under suspension on the charge of holding properties disproportionate to his known sources of income. A departmental proceeding was initiated and the petitioner was dismissed from the service of the State Government by an order issued by the Deputy Inspector General of Police on 8.5.1961. When the departmental appeal and representation filed on behalf of the petitioner were rejected he filed Title Suit No. 10 of 1966 in the Court of Additional Subordinate Judge, Bhagalpur, for declaration that the order of his dismissal was illegal and without jurisdiction.

2. The learned Additional Subordinate Judge recorded findings on different issues in favour of the petitioner but dismissed the suit due to non-compliance of the

provisions of section 80 of the Code of Civil Procedure. Being aggrieved by that judgment the petitioner filed a First Appeal (First Appeal No. 407 of 1973) before this Court. That First Appeal was heard and allowed by a Bench of this Court, on 29.4.1981. The learned Judges came to the conclusion that there has been a compliance of section 80 of the CPC and as such the suit should not have been dismissed on that ground. On merits of the order of dismissal it was observed as follows:--

If, therefore, the plaintiff was initially appointed by I.G. of Police, D.I.G. being subordinate to him, cannot competently pass orders of his dismissal. In agreement with the trial court I have, therefore, no hesitation in holding that the orders of dismissal of the plaintiff appellant were illegal, without jurisdiction and void."

As the appeal was allowed only on the ground that the petitioner having been appointed by the Inspector General of Police could not have been dismissed by the Deputy Inspector General of Police, this Court did not consider the other questions including whether there was merit in the charges levelled against the petitioner. In the judgment, it was specifically observed as follows:--

If the order of dismissal of the plaintiff fails on this jurisdictional point, as it must, it may not be necessary to investigate the other questions, namely, violation of the rules of natural justice and matters incidental to the existence of mala fide etc. Concluding, the order of dismissal passed on the plaintiff-appellant is held to be illegal, ultra vires, without jurisdiction and void and he is held further entitled to the relief claimed by him in the plaint, subject of course to the payment of ad valorem court fee for both the courts leviable in accordance with law, which will be a condition precedent to the entitlement of the plaintiff to the usufruct of the decree being passed. Since the charges against the plaintiff-appellant are grave and serious in nature, it would be open to the defendant to proceed against the plaintiff-appellant in accordance with law."

3. In accordance with the direction given in the aforesaid First Appeal the petitioner deposited the court fee on 25.5.1981 and submitted his joining report. The petitioner was, however, not allowed to join and he superannuated on 31.1.1983. A special leave application filed on behalf of the State of Bihar before the Supreme Court against the aforesaid judgment of this Court was rejected. Thereafter on 11.10.1984 the impugned order was passed by the Director General-Cum-Inspector General of Police, saying that in view of the decision given in the aforesaid First Appeal No. 407 of 1973, the order of dismissal passed against the petitioner was being cancelled and the petitioner was being reinstated to his post with effect from the forenoon of 8.5.1961. So far up to this part of the order there is no objection on the part of the petitioner. But having reinstated him with effect from the date of his dismissal the order further said that as the petitioner was under suspension on the date of dismissal he shall be deemed to be under suspension from the date of the dismissal till the date of his retirement, i.e., till 31.1.1983. The order further said that as per the decision of

this Court, the departmental enquiry shall be continued against the petitioner and only after disposal thereof a decision shall be taken in respect of the payment of salary etc. during the period of suspension. Another order was issued on 10.10.1985 saying that the petitioner had been dismissed after a departmental proceeding on 8.5.1961 against which he went to the High Court in the First Appeal No. 407 of 1973; the High Court has declared the order of dismissal as invalid but it has also observed that the charges levelled against the petitioner were serious. In view of the aforesaid observation, departmental proceeding could have been further continued against the petitioner. Thereafter the order pointed out that the petitioner had been reinstated with effect from 8.5.1961, but as he was under suspension from the date of dismissal, he shall be deemed to have been under suspension till the date of his retirement (31.1.1983). Lastly it said that the department has examined the charges levelled against the petitioner. The charges against the petitioner were found to have been established and as such the petitioner was being compulsorily retired with effect from 31.1.1983, the date of his superannuation. A direction was given to deduct 10 per cent from his pension and nothing was to be payable to the petitioner for the period of his suspension.

4. According to the petitioner, once this Court, in the aforesaid First Appeal, had declared the order of dismissal as invalid and the petitioner had been reinstated to the post with effect from 8.5.1961, by aforesaid order dated 11.10.1984, it was not open to the respondents to treat the petitioner to be under suspension with effect from 8.5.1961 and thereafter to compulsory retire him with effect from the date of his retirement.

5. At the outset we may observe that some very unusual procedure has been adopted by the State Government in respect of the petitioner. After this Court declared the order of dismissal to be invalid because it had been passed by the Deputy Inspector General of Police who was not the appointing authority of the petitioner and this Court gave option to the respondents to proceed afresh against the petitioner. In normal course, the respondents should have proceeded with the departmental proceeding which shall be deemed to be pending against the petitioner and the respondents should have passed any appropriate order in accordance with law either exonerating the petitioner of the charges levelled against him or dismissing him from the service of the State Government. But so such steps were taken and the petitioner retired from the service of the State Government on 31.1.1983. Thereafter two orders have been issued, one reinstating the petitioner to the service of the State Government with effect from 8.5.1961 but withholding payment of arrears of salary saying that the petitioner will be deemed to be under suspension although he has been reinstated with effect from 8.5.1961. The second order dated 10.10.1985 compulsorily retires the petitioner after he has retired from the service of the State Government. That order has been issued without hearing the petitioner. No final order in the departmental proceeding could have been passed without again giving an opportunity to the petitioner. We fail to understand as to how when the then

Director General-Cum-Inspector General of Police, vide his order dated 11.10.1984, reinstated the petitioner with effect from 8.5.1961, it will be deemed that since that date till the date of the retirement he was under suspension. Similarly, when the petitioner had already retired, how he has been compulsorily retired by order dated 10.10.1985 as punishment without even informing the petitioner that his departmental proceeding has been taken up for hearing and a final order is to be passed in that proceeding.

6. On behalf of the petitioner it was urged that once this Court has held the order of dismissal to be invalid, the effect will be that the petitioner has continued in the service of the State Government throughout and as such entitled to the arrears of salary to which he would have been entitled had he not been dismissed by order dated 8.5.1961. It was urged that the effect of the declaration by this Court in the First Appeal aforesaid will be that the departmental proceeding initiated against the petitioner itself shall be deemed to have been held as illegal and without jurisdiction. We are not inclined to go to that extent. The judgment of this Court in the First Appeal aforesaid is very clear and there is no ambiguity. It was pointedly said that the order of dismissal was being held to be invalid on the ground that the Deputy Inspector General of Police had no jurisdiction to dismiss the petitioner when he had been appointed by the Inspector General of Police. But the learned Judges hastened to add that in view of the order being held invalid and without jurisdiction on the ground aforesaid, it was not necessary for them to investigate the other question, namely, violation of the rules of natural justice and the existence of mala fide etc. They further gave an option to the State Government to proceed against the petitioner in accordance with law as the charges against the petitioner appeared to be grave and serious in nature. In our opinion, in the earlier appeal filed on behalf of the petitioner, only the final order passed dismissing the petitioner from the service of the State Government was held to be illegal and without jurisdiction. On the basis of that judgment it cannot be held that even the charges levelled against the petitioner and the materials collected in the departmental proceeding were quashed as well.

7. But the question is as to whether on the basis of the materials produced in the departmental proceeding, it was open to the Director General-Cum-Inspector General of Police to compulsorily retire the petitioner after he has superannuated without even informing that the departmental proceeding has been revived. In our view, the answer is in negative. The Director General of Police having reinstated the petitioner with effect from 8.5.1961 could not have held that he shall be deemed to be under suspension with effect from 8.5.1961 up to 31.3.1983, the date he superannuated. Again no order of compulsory retirement could have been passed against the petitioner retiring him from the service of the State Government with effect from the date of his retirement without even informing that a final order is going to be passed in the proceeding which had been initiated sometime in the year 1954. Accordingly, we quash that part of the order dated 11.10.1984 where it has been said that the petitioner shall be

deemed to be under suspension with effect from 8.5.1961 till the date of his retirement. We also quash the order dated 10.10.1985 by which the petitioner has been compulsorily retired from the service of the State Government with effect from 31.1.1983, the date of his superannuation.

8. The next question which falls for consideration is as to whether a direction be given to the respondents to pay the salary of the petitioner with effect from 8.5.1961 till he retired, i.e., 31.1.1983. Once the two orders have been quashed it will be deemed that the petitioner has been reinstated with effect from 8.5.1961. The petitioner shall be entitled to full salary and other emoluments from 25.5.1981, the day he gave his joining report, up to 31.1.1983, when he retired from the service of the State Government. He shall also be entitled to full pension and any other benefit which is available to persons similarly situated after retirement. So far payment of arrears for the period 8.5.1961 to 24.5.1981 is concerned, Mr. Kamlapati Singh, the learned Government Pleader placed reliance on Rule 97 of the Bihar Service Code. Rule 97 is as follows :--

97. When a Government servant who has been dismissed, removed, or suspended is reinstated, the authority competent to order the reinstatement shall consider and make specific order :-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in sub-rule I, is of opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled, had he not been dismissed, removed, or suspended as the case may be.

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as the competent authority may prescribe:

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under (3) the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose.

Rule 97(1) requires the competent authority to consider and to pass a specific order regarding the pay and allowance to be paid to the Government servant for the period of his absence from duty, when a Government servant who has been dismissed or removed is reinstated. Rule 97 (2) prescribes that a Government servant shall be given full pay and allowance to which he would have been

entitled, had he not been dismissed or removed from, the service, "if the Government servant has been fully exonerated". Mr. Government Pleader submitted that full pay and allowance could have been paid to the petitioner for the period from 8.5.1961 up to 24.5.1981 if the petitioner had been fully exonerated of the charges levelled against him. But as this Court declared the order of dismissal invalid only on the ground of competency of the Deputy Inspector General of police to pass such an order without recording a finding in respect of the charges levelled against the petitioner it shall not be deemed that the petitioner has been fully exonerated of the charges levelled against him. In this connection it was further pointed out that this Court has observed that the charges were grave and serious in nature giving option to the respondents to proceed against the petitioner in accordance with law. In our opinion, there is substance in this contention. In the facts and circumstances of the present case, it cannot be held that the petitioner has been fully exonerated of the charges levelled against him. As such the case of the petitioner is covered not by Rule 97(2) but Rule 97(1). In other words, the competent authority has to consider and make specific order regarding the pay and allowance to be paid to the petitioner for the period of his absence from duty taking all facts and circumstances into consideration.

9. Accordingly, this writ application is allowed with a consolidated costs of Rs. 500/-. The respondents are directed to treat that the petitioner rejoined the service of the State Government with effect from 25.5.1981 and to pay the salary and other allowances from that day till his retirement on 31.1.1983. The petitioner shall also be entitled to pension and other benefits after retirement. In respect of the period 8.5.1961 up to 25.5.1981 we direct the Director. General-Cum-Inspector General of Police who appears to be the competent authority to consider in accordance with Rule 91(1) of the Code as to what should be paid to the petitioner for the period aforesaid. We, however, make it clear that any amount payable to the petitioner for that period must be over and above the amount which is payable to a person in accordance with Rule 96 of the Code if such person is under suspension. Before we part with this judgment, we may observe that whatever be the merit of the charges levelled against the petitioner, it cannot be denied that he has undergone great harassment and has been pursuing his remedy in the court of law for more than 25 years and as such any appropriate decision in accordance with law on the question aforesaid shall be taken at an early date preferably within four months from the date of production of this order.