

(2003) 01 PAT CK 0125
In the Patna High Court
Case No : L.P.A. No. 428 of 2002

State of Bihar and Others

APPELLANT

Vs

Dr. Chandeshwar Mishra @ Chandreshwar Mishra

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Citation : (2003) 01 PAT CK 0125

Final Decision : Dismissed

Judgement

1. This appeal is barred by limitation.
2. After hearing learned Counsel for the parties and taking into consideration the averments made In the limitation petition, the delay in filing this appeal is condoned.
3. The State is aggrieved by part of the order dated 17.1.2002 passed by the learned single Judge, whereby while disposing of the writ-application filed by the writ Petitioner Respondent against the order of dismissal dated 13.5.2000 (wrongly mentioned as 23.5.2000 in the impugned order), learned single Judge has remanded the matter to the authority to consider the quantum of punishment afresh.
4. The factual matrix for the disposal of the present appeal are that 33 Warders were appointed on temporary basis with a clear stipulation in the appointment letters that they will be appointed on regular basis subject to passing of the test. They could not pass the test and were discharged from service in 1986 in pursuance of the order issued by the State Government. Later on, again a government order was issued clarifying the position that there was no direction to discharge them but to continue their engagement subject to fulfilment of condition that they have to pass the test. The said Warders were again engaged on temporary basis. Thereafter, it appears that nothing was done. In June, 1992 the writ Petitioner Respondent joined as Superintendent of Central Jail, Bhagalpur. He was transferred from that place in December, 1993. However, on

16.1.1994. he regularised the services of aforesaid 38 Warders against the circulars of the Government which has been detailed in the counter affidavit filed on behalf of the State.

5. It appears that the successor in office of the writ Petitioner-Respondent issued an advertisement for fresh appointment of Warders which was quashed by this Court. 38 Warders were ordered to appear at the test for their regular appointment as the order of their regularisation passed by the writ Petitioner-Respondent was not approved by the I.G. (Prisons). The writ Petitioner-Respondent challenged the aforesaid notice before this Court in C.W.J.C. No. 10910 of 1994 and this Court by order dated 3.7.1996 held that the notice which was impugned in the said writ application was not sustainable in the eye of law and directed the I.G. (Prisons) to pass final order pursuant to the order dated 16.1.1994 by which services of the Warders were regularised. Thereafter, I.G. (Prisons) disposed of the matter by speaking order asking the Warders to appear before the Selection Committee. The said Warders challenged the aforesaid decision in C.W.J.C. No. 998 of 1997 and the learned single Judge disposed of the said writ application with an observation that they should appear before the Selection Committee for test and the Selection Committee will relax the requirement of their physical fitness taking into consideration the fact that they were in service from before.

6. As stated above, in the year 1996 when Government came to know about the order of illegal regularisation passed by the writ Petitioner-Respondent, an enquiry was held and a decision was taken to initiate departmental proceeding against him. Thereafter, departmental proceeding was initiated against him and he was put under suspension. The writ Petitioner-Respondent challenged the order of his suspension in the writ application out of which the present appeal arises. In the meantime, on 13.5.2000 after conclusion of the departmental proceeding the writ Petitioner Respondent was dismissed from service. By amendment petition he challenged the aforesaid order which has been annexed as Annexure-29 to the supplementary affidavit to the writ application.

7. The allegation against the writ Petitioner-Respondent as appears from the departmental proceeding is that he illegally regularised the services of 38 Warders, which was contrary to the Government circular and full opportunity was given to the writ Petitioner Respondent to defend in the departmental proceeding and thereafter impugned order of dismissal was passed.

8. Learned single Judge has found that while conducting departmental proceeding full opportunity has been given to the writ Petitioner-Respondent and thereafter order of dismissal has been passed. In other words, he did not find any fault so far conduct of departmental proceeding is concerned. He also found that the allegations were proved by materials on the record and no ground for interference with the said order was made out. However, he opined that the punishment awarded to the writ Petitioner-Respondent appeared to be disproportionate. He dealt with the matter in para 10 of the order which runs as

follows:

10. All said and done, I am inclined to agree with the counsel that the punishment of dismissal is harsh and dis-proportionate considering the nature of the charges. Though I do not intend to make a general observation, judicial notice can be taken of the magnitude of illegal appointments, at will of the authority concerned. Such appointments may be for extraneous consideration, it may also be the result of indiscretion on the part of the authority. Though charges referred to appointment made for personal gains by the Petitioner, counsel for the Petitioner appears to be right that no material has been produced to show that he had taken any illegal gratification in making the appointment. Had the been so the matter would have been more serious and stood on different footing. It may also be true, as pointed out by the counsel with reference to the impugned order, that the un-satisfactory record of service of the Petitioner was in the back of the mind of the concerned ; authority of the government, but that cannot be ground to award the extreme punishment of dismissal when the misconduct, if any, committed by him in the past was not subject matter of the proceeding, However, this Court cannot substitute the punishment under Article 226 of the Constitution, it can only direct the Government to reconsider the nature and quantum of punishment. In the facts and circumstances, I am of the view that ends of justice would be served by directing the Government to reconsider the quantum of punishment vis-a-vis the nature of the charges levelled against the Petitioner and in the light of the observation made hereinabove.

9. Law on this point is well settled that it is for the disciplinary authority to decide the quantum of punishment and this Court in exercise of power under Article 226 of the Constitution of India cannot be a substitute for the disciplinary authority. The order awarding punishment is to be not lightly interfered with. The Court will interfere with the order of punishment only when the order is such that no reasonable man can pass such order. In other words, it is shockingly disproportionate.

10. A Constitution Bench of the Apex Court in the case of State of Orissa Vs. Bidyabhushan Mohapatra, while considering the question of power of the Court exercising judicial review to interfere on the question of penalty, held as follows:

But the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were "unassailable", the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty

for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any findings as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal *prima facie* make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice.

11. Same view has been reiterated in the case of Union of India (UOI) Vs. Sardar Bahadur, and State Bank of India and Others Vs. Samarendra Kishore Endow and Another, Recently in the case of Om Kumar and Others Vs. Union of India, the Apex Court has held that in determining the quantum of punishment, role of administrative authority is primary and the role of the Court is secondary one. The Court has only to see if discretion exercised by the administrative authority caused excessive infringement of rights. While reviewing the quantum of punishment the Court has to see as to whether the disciplinary authority has omitted any relevant fact or any irrelevant fact has been taken into account or any irregularity has been committed by the disciplinary authority or the punishment is shockingly disproportionate. If the punishment has been awarded after considering all relevant facts, then the Court (*sic*) will not interfere with the order.

12. Coming to the facts of the present case, as stated above the writ Petitioner Respondent after being transferred from the place, regularised the services of 38 Warders, whose regularisation has been found bad by this Court. On these allegations if the disciplinary authority, which has to consider the quantum of punishment, has awarded punishment of dismissal, the same cannot be said to be shockingly disproportionate nor can it be said to have been passed on irrelevant consideration. In absence of any finding that the punishment imposed was shockingly disproportionate, in our view, it was not a case where this Court in exercise of power under Article 226 of the Constitution of India should have directed for reconsideration of the quantum of punishment.

13. In the result, the appeal filed by the State against part of the impugned order is allowed and the direction of the learned single Judge for reconsideration of the matter regarding punishment is set aside and the writ application stands dismissed.