

(2013) 09 PAT CK 0124

In the Patna High Court

Case No : Letters Patent Appeal No. 1241 of 2011 in Civil Writ Jurisdiction Case No. 2301 of 2009 With Interlocutory Application No. 6069 of 2011 And Interlocutory Application No. 7838 of 2011

State of Bihar

APPELLANT

Vs

Arun Kumar Jha

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2013) 4 BBCJ 378 : (2013) 4 BLJud 338

Hon'ble Judges : R.M. Doshit, CJ. and Ashwani Kumar Singh, J.

Bench : Division Bench

Advocate : Mrs. Nilu Agrawal, GA 6 and Mr. Jainendra Kumar Sinha, AC to GA 6, for the Appellants; Mr. Kishore Kumar Thakur, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

R.M. Doshit, CJ.—This Appeal under Clause 10 of the Letters Patent is preferred by the respondent State of Bihar against the order dated 17th November 2009 made by the learned single Judge in CWJC No. 2301 of 2009.

2. The matter at issue lies in a narrow compass. The question is whether the appellant State of Bihar should be permitted to proceed with the departmental proceedings initiated against the respondent-writ petitioner (hereinafter referred to as "the delinquent"). The learned single Judge, under the impugned order dated 17th November 2009, directed the appellants to conclude the departmental proceedings within four months and restrained the appellants from proceeding with the departmental proceedings any further. In the event the departmental proceedings were not concluded within four months as directed, the learned single Judge further directed to initiate departmental proceedings against those who failed to comply with the order of the Court resulting in the benefit to the delinquent.

3. True to its character, the State Government failed to conclude the

departmental proceedings within the specified time. The Government, therefore, approached the learned single Judge in MJC No. 2723 of 2010 for extension of the aforesaid period for conclusion of the departmental proceedings. The learned single Judge, under order dated 11th August 2010, observed that the delay in concluding the departmental proceedings was not attributable to the delinquent. The learned single Judge, therefore, refused to extend the time and rejected the application.

4. At the relevant time, the delinquent was posted as the Under Secretary to the Government of Bihar, Personnel & Administrative Reforms Department. In course of his duty, he was alleged to have demanded illegal gratification of Rs. 50,000/- from one Rajiv Nandan Maurya, a fellow government servant. On the complaint made by the said Rajiv Nandan Maurya, in a trap laid by the Vigilance Department, the delinquent was caught red-handed accepting the illegal gratification of Rs. 10,000/- (out of the agreed sum of Rs. 50,000/-) from the said Rajiv Nandan Maurya. Pursuant to the said incidence, under Notification dated 29th December 2006, the delinquent was placed under suspension. In respect of the said incidence, a criminal case has been lodged against the delinquent. A departmental action was also initiated against the delinquent.

5. Feeling aggrieved by his continued suspension, the delinquent approached this Court under Article 226 of the Constitution in CWJC No. 10143 of 2008. This Court (Coram: Ajay Kumar Tripathi, J.), under order dated 22nd July 2008, disposed of the Writ Petition with the direction that in case no further steps were taken pursuant to the enquiry report within three months, the suspension of the delinquent would be revoked. The Court also observed that the claim of the delinquent for enhanced subsistence allowance be considered by the State Government. It appears that the report of the enquiry officer submitted in 2007 was not acceptable to the State Government and the State Government had ordered enquiry de novo. The enquiry commenced against the delinquent afresh was not completed within reasonable time and the delinquent was continued under suspension. Once again, the delinquent approached this Court under Article 226 of the Constitution to challenge his continued suspension from service in above CWJC No. 2301 of 2009. The delinquent prayed that he be released from suspension immediately. The said petition was allowed by the learned single Judge with a direction to the appellants to complete the enquiry within four months failing which the appellants were restrained from proceeding further with the enquiry.

6. As the appellants have failed to complete the departmental proceedings within the specified period, they are now restrained from proceeding further with the enquiry. The appellants have, however, revoked the order of suspension made against the delinquent and have reinstated the delinquent in service.

7. The question before us is whether in the above referred factual scenario, should the Court allow the appellants to proceed further with the departmental proceeding against the delinquent or should the departmental proceeding

initiated against the delinquent be closed as directed by the learned single Judge.

8. Learned advocate Mrs. Nilu Agrawal has appeared for the appellants. She has relied upon the supplementary affidavit filed in the present Letters Patent Appeal. She has strenuously urged that having regard to the nature and gravity of the misconduct allegedly committed by the delinquent, the delinquent should not be allowed to go scot-free. The appellants should be allowed to proceed with the departmental proceedings against the delinquent. She has submitted that the delay in the departmental proceedings has occurred largely on account of non-cooperation by the delinquent. She has submitted that apart from the departmental proceedings initiated against the delinquent, a criminal prosecution is also pending against the delinquent. She has submitted that in the criminal prosecution the delinquent had been supplied copy of the charge sheet and all the documents on 16th February 2008. Nevertheless, the delinquent has not cooperated in the criminal prosecution either. The delinquent asked for discharge under Section 227 of the Code of Criminal Procedure which came to be rejected on 18th July 2008. Challenge to the said order dated 18th July 2008 before this Court in Cr. Misc. No. 34060 of 2008 failed as early as on 8th July 2011. Although the said challenge had failed as early as on 8th July 2011, the delinquent either did not appear before the Court or did not produce copy of the order before the trial court and went on asking for time under one pretext or the other until August 2013. She has submitted that the attempt of the delinquent to delay the criminal prosecution and to avoid departmental proceedings is apparent.

9. Learned advocate Mr. Kishore Kumar Thakur has appeared on behalf of the respondent delinquent. We have heard Mr. Thakur extensively. He has taken us through the records and the possible defence in the criminal trial. Mr. Thakur has vehemently submitted that he has a right to be heard to his heart's content and we have allowed him to argue to his heart's content.

10. To us, it appears that the delinquent has made every effort to delay the criminal prosecution. Once the application for discharge under Section 227 of the Code of Criminal Procedure has been rejected, the necessary consequence should be framing of charge and the trial. However, for past more than four years, the delinquent has successfully avoided the criminal prosecution. The trial court also does not seem to be very keen in proceeding with the criminal prosecution. It should be in the interest of justice that the trial court proceeds and completes the criminal prosecution against the delinquent in Special Case No. 58 of 2006/37 of 2007 pending before the Special Judge, Vigilance-I, Patna without further delay.

11. Having regard to the nature of the allegation made against the delinquent, we do not suppose that the delinquent should be allowed to avoid the departmental proceedings under the guise of delay and laches. It is evident that the investigating agency, being the Vigilance Investigation Bureau, there is some delay on account of communication gap. Be that as it may, a government officer,

facing prosecution for the offence punishable under the Prevention of Corruption Act, has to face the departmental proceedings also. Such departmental proceeding cannot be closed prematurely unless the court comes to a conclusion that the entire case against the delinquent is fabricated and the action is vitiated by mala fide.

12. In the present case, the delinquent has not even made allegation of mala fide or a fabricated case. All that the delinquent wanted was the revocation of suspension and nothing more. As the order of suspension has been revoked and the delinquent has been reinstated in service, the Writ Petition stands allowed. The delinquent can have no further cause of action.

13. For the aforesaid reason, the Appeal is allowed. The impugned order dated 17th November 2009 made by the learned single Judge in CWJC No. 2301 of 2009 is set aside. The appellants are permitted to proceed further with the departmental proceedings initiated against the respondent-writ petitioner (delinquent) and will complete the same as early as possible, preferably within eight months from today. The respondent is directed to cooperate in the departmental proceedings.

14. In the event the departmental proceeding is not completed within eight months as directed, the disciplinary authority will record the reasons for such delay.

15. Subject to the above direction, the Appeal and the Interlocutory Applications stand disposed of.

16. Registry will send copy of this order to the Special Court, Vigilance-I, Patna forthwith.

Ashwani Kumar Singh, J.—I agree.