
(2016) 03 PAT CK 0014

In the Patna High Court

Case No : Letters Patent Appeal No. 131 of 2013

State of Bihar

APPELLANT

Vs

Narmdeshwar Sharma

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b)

Citation : (2017) 1 PLJR 252

Hon'ble Judges : Mr. Hemant Gupta And Mr. Navaniti Prasad Singh, JJ.

Bench : Division Bench

Advocate : Mr. Anjani Kumar, A.A.G. 6 Mr. Sanjay Prasad, A.C. to A.A.G. 6, for the Appellant; Mr. Lalan Kumar Singh, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Hemant Gupta, J. (CAV)- The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 11th of August, 2011 in C.W.J.C. No. 8338 of 2009, whereby the learned Single Bench has set aside the order of punishment.

2. Respondent No. 1 was an Executive Engineer working with the appellants. He attained the age of superannuation on 30th of June, 2002. He was charge-sheeted on 25th of March, 2003 supplemented by another charge-sheet dated 21st of April, 2003 under Rule 43(b) of the Bihar Pension Rules. Out of five charges, four have been found to be proved by the Inquiry Officer. It is thereafter, an order of punishment was passed withholding 50 per cent of his pension, and nothing to be paid beyond Subsistence Allowance for the period of suspension. The appeal against the order of punishment was dismissed on 18th of November, 2009.

3. The learned Single Bench in the writ proceedings found, that though, the department relied upon the documentary evidence, but still fundamental requirement of considering the defence by the Inquiry Officer cannot be waived.

It found that the entire Inquiry Report is lop-sided as it deals only with the documentary evidence of the prosecution whereas defence of the appellant finds no discussion or consideration. Therefore, the Court found that there is infirmity in the decision making process. It also found that the order of punishment withholding the pension is extremely a serious matter whereas in the case of the Respondent No. 1, there is an order of withholding 50 per cent of his pension and that too for ever. In view of the said facts, the learned Single Bench allowed the writ application filed by the Respondent No. 1 herein.

4. The Inquiry File was called for perusal. The Inquiry Report dated 12th of August, 2003 shows that the charge against the Respondent No. 1 is that he has distributed the amount of Rs. 13,76,000/- amongst different offices without determining works and publication of tender for the same, which is in violation of Rule 100 of the Treasury Rules and that he paid a sum of Rs. 1,58,319/- by bifurcating the amount in parts. The Inquiry Officer notices that five charges are levelled against the official. It has considered the reply dated 29th of April, 2003 and 8th of May, 2003 submitted by Respondent No. 1 herein.

5. Learned counsel for the appellant vehemently argued that the Writ Court in exercise of powers of judicial review cannot sit as a Court of Appeal against the findings recorded by the Inquiry Officer. Since the Inquiry Officer has discussed the entire documentary evidence by specifically noticing that it has considered the reply dated 29th of April, 2003 and 8th of May, 2003, this Court in a writ application will not sit over the findings recorded by the Inquiry Officer to return that the defence of the employee has not been taken into consideration.

6. A perusal of the original inquiry file and the Inquiry Report dated 12th of August, 2003 shows that five charges against the Respondent No. 1 herein were considered and the Respondent No. 1 was found to be guilty of Charge Nos. 1, 2, 4 and 5.

7. There is detailed discussion on each of the charges levelled against the Respondent No. 1. We do not think that this Court in exercise of judicial review can infer that the defence of the Respondent No. 1 was not considered. The reading of the Inquiry Report shows that various documents were referred to return a finding of guilt against the Respondent No. 1. Therefore, a mere allegation that defence has not been taken into consideration is not sufficient to return a finding that the inquiry stands vitiated.

8. We are unable to uphold the finding of the learned Single Bench that it is lopsided as it only deals with the documentary evidence of the prosecution.

9. Learned counsel for the Respondent No. 1 then vehemently argued that the order of punishment of withholding 50 per cent of pension, that too for life, is harsh and unjust.

10. Since the allegation against the Respondent No. 1 was of causing loss along with other officials, the extent of loss suffered is a relevant consideration before

quantifying the punishment. A perusal of the order of punishment does not show that any such consideration has been adopted while ordering for withholding of pension to the extent of 50 per cent and that too for life. A Government servant earns pension on account of his services rendered to the State for large number of years. The benefit of such services cannot be lightly interfered with, that too in the evening of life of an employee. Withholding of pension for life is harsh irrespective of the extent of financial loss suffered by the State even on the proved misconduct against an employee. Such punishment is shockingly disproportionate to a former employee. Therefore, we find that the order of punishment is too harsh which cannot be sustained.

11. Consequently, we set aside the order passed by the learned Single Bench and uphold the finding recorded by the disciplinary authority that Respondent No. 1 is guilty of misconduct but in respect of punishment, we remit the matter to the disciplinary authority to pass fresh order in respect of the extent of pension to be withheld and also for number of years it should be deducted. The pension should not be reduced for life, in the facts of the case.

12. The Letters Patent Appeal is, thus, disposed of accordingly.

Navaniti Prasad Singh, J - I agree.