

(2005) 03 PAT CK 0109
In the Patna High Court
Case No : C.W.J.C. No. 11976 of 1999

Suresh Prasad Verma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Citation : (2005) 03 PAT CK 0109

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and the learned counsel for the State.

2. The writ petition questions the action of the respondents dated 24.5.1988 at Annexure-4 by which a decision was taken to commence a fresh de novo departmental enquiry against the petitioner and in pursuance of which necessary communication on 4.6.1997 at Annexure-3, enclosing certain documents in respect of such de novo enquiry come to be issued.

3. The facts necessary for adjudication of the grievance of the writ petitioner would be that the petitioner while in service was served with a memo of charges. Annexure-2 would reveal that the charges were primarily of the nature of irregularities in appointment of retrenched and Muster Roll Workers. The departmental enquiry, led to the submission of an enquiry report on 20.6.1997. The Enquiry Officer by a reasoned order exonerated the petitioner. Soon thereafter the impugned order dated 24.5.1988 at Annexure-4 came to be issued for a fresh de novo enquiry. Annexure-4 would not spell out the reasons for such de novo enquiry. It would however record that such fresh enquiry be completed within a period of two months. The new Enquiry Officer by his communication dated 20.4.1999 while noticing that the delinquent being present the departmental representative was absent, returned the matter to the Government with certain comments concerning the limitations of a de novo enquiry in view of the earlier enquiry report and sought instructions upon the same. The petitioner superannuated on 31.10.2001 before anything further could happen in the

matter.

4. The counter affidavit on behalf of the respondents would allege appointment by the petitioner without sanctioned post as one of the allegations. However the Court would not find the same as one of the grounds in the memo of charges. The counter affidavit filed in July 2000 would state that the Government was considering the communication of the new Enquiry Officer dated 20.4.1999 and that "final decision is expected to be taken very soon".

5. Today when the matter was taken up in response to the earlier order of this Court learned counsel for the State submitted that he had instructions to submit that the matter was still under active consideration and final decision in accordance with the procedure in the changed circumstances was likely to be taken very soon.

6. This Court upon consideration of the entire matter and the submissions on behalf of the parties would arrive at the conclusion that the de novo enquiry in a situation where the enquiry report has been submitted would be permissible in certain circumstances. However in the present case, this Court is satisfied that the said issue does not fall for consideration for reasons to be enumerated hereinafter. This would be primarily for the reasons attributable to the respondents themselves. Having taken a decision to hold de novo enquiry as far back as 1988 and having received the communication of the Enquiry Officer in 1999 the Government is today in the year 2005 yet to take a decision in the matter, whether such de novo enquiry would be permissible, and if so in what manner and to what extent. This Court finds that there are no allegation against the petitioner of financial embezzlement, defalcation, appointment for personal gain etc. The allegations would be of irregularities in appointment. Though the counter affidavit would allege appointment on un-sanctioned posts, beyond the memo of charges, the counter affidavit would be silent what action was taken by the respondents with regard to such persons who were appointed by the petitioner on such un-sanctioned posts. The petitioner is stated to have superannuated on 31.10.2001. This Court would require compelling reasons and circumstances to subject the petitioner to the vagaries of a departmental proceeding at this belated stage in the evening of his life. This Court is satisfied in the facts and circumstances of the present case that it is not of a nature so as to permit the departmental proceeding to continue in the larger interest of justice. It would be settled law that unreasonable delay in conclusion of departmental proceeding and keeping the same pending without any reasonable and plausible explanation for the delay would render the same arbitrary and liable to interference in exercise of powers under Article 226 of the Constitution.

7. This Court would for the purpose usefully rely upon the judgment of the Apex Court reported in State of Andhra Pradesh Vs. N. Radhakishan, , and for the purpose quote hereinbelow paragraph 19 of the judgment:

"19. It is not possible to lay down any predetermined principles applicable to all

cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right to that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employees. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

8. In the circumstances the impugned order at Annexure-4 dated 24.5.1988 and Annexure-3 dated 4.6.1997 are accordingly quashed.

The writ application stands allowed. No costs.