
(1990) 07 PAT CK 0011

In the Patna High Court

Case No : Letters Patent Appeal No. 11 of 1990

The State of Bihar and Others

APPELLANT

Vs

Bachcha Lal Das

RESPONDENT

Date of Decision : 07-07-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1992) 1 BLJR 581 : (1991) 2 PLJR 652

Hon'ble Judges : G.G. Sohani, C.J;S.C. Mookerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Mookherji, J.—This Letter Patent Appeal is directed against the judgment, dated 11-12-1989 of a learned Single Judge of this Court allowing the respondent's petition under Articles 226 and 227 of the Constitution of India challenging validity of the State Government's order, dated 24-1-1989 retiring the respondent prematurely from Jail Service in terms of Rule 74(b)(ii) of the Bihar Service Code.

2. In view of short and limited question involved in this appeal, it is needless to state facts of the case in detail.

3. In March 1966 the respondent was initially appointed as a Superintendent in the Junior Branch of the Bihar Jail Service and was confirmed on that post on 1-3-1970. There was some delay in confirmation on account of some adverse remarks against him. In course of his service, he was posted at different places and was also suspended on certain charges on different occasions. The suspensions were, however, revoked either by the Government or on the order of this Court.

4. In August 1983, he was posted as Assistant Inspector-General, Prisons, II, a higher post, at Patna (Annexure 1 to Original Writ Application) and while holding that post, he was transferred as Principal, Jail Training Institute, Hazaribagh in

November, 1985. Since there was, at that time, no separate post of Principal the respondent challenging the order filed a writ in this Court which was disposed of in the following terms:

Taking all facts and circumstances into consideration, we are of the opinion that as the petitioner has been posted by order, dated 19-8-1985 as Assistant Inspector-General, Prisons till further orders, he can be transferred to the post of Principal, Prisons Training Institute, Hazaribagh subject to the condition that he shall be entitled to draw the same scale of pay which he is entitled while posted as Assistant Inspector-General, Prisons, Patna.

Against that order also, the respondent filed Special Leave Application (6506 of 1987) before the Supreme Court which was disposed of with the following directions:--

The order of appointment, dated 19th August, 1983 to which reference has been made in the extract above, reads thus:

Notification No. 6170/JI.--In continuance of the Home (Jail) Department's Notification No. G166/JI, dated 19-8-1983, Shri Bachcho Lal Das is appointed to the post of Assistant Inspector-General of Prisons, II, Bihar, until further orders.

There is no dispute that in terms of the order of the High Court, the petitioner in his new post is entitled to the same scale of pay as was admissible to him in the post of Assistant Inspector-General of Prisons II, at Patna. However, there is dispute as to what exactly that pay scale was. The Accountant General of Bihar is directed to communicate to the Registry of this Court within a fortnight from today as to what was the pay scale admissible to the petitioner as Assistant Inspector General of Prisons (2), Bihar as on 19-th August, 1983 in terms of the order of appointment indicated above. The matter stands adjourned to 6th of October, 1987.

Mr. Goverdhan appearing for the State of Bihar undertakes that if the petitioner proceeds to Hazaribagh, he will be permitted to join his post as Principal, Jail Training Institute, Hazaribagh and receive charge of that post from the Superintendent of that Jail who is at present holding that additional charge. The petitioner undertakes to join on 23rd September, 1987. Once the petitioner is there at Hazaribagh on the date indicated, it shall be the obligation of the Superintendent, Central Jail, Hazaribagh to see that the petitioner receives charge of his post.

The Superintendent, Central Jail, Hazaribagh is directed to report the fact of making and taking over of charge on 23rd September, 1987 as directed by this Court. The report must be submitted within ten days from 23rd of September, 1987. A copy of the order be given to Mr. Goverdhan to work out the undertaking given by him to the Court today. A copy of the order be also given to the petitioner to enable him to report to duty as indicated.

5. On receipt of the report of the Deputy Accountant General, Bihar, the Supreme

Court disposed of Special Leave Application on 27-10-1987 with these observations:

We have received the report of the Deputy Accountant General, Bihar, dated 7-10-1987 where he suggests in view of the facts stated above, the scale of pay of Assistant Inspector-General of Prisons may be treated as Rs. 1,575--50--1,775--75--2300 on 19-8-1983. -In view of the report and in view of what this Court has stated in the order dated 16-9-1987, the petitioner shall be entitled to the pay scale of Rs. 1,575--50--1,775--75--2300. The State shall pay him at the appropriate rate in the aforesaid scale his salary for the period from 1983 up to 1987 after deducting what has been paid. It is open to the State to make any adjustment in accordance with law. In case the petitioner would have been over paid, the State may pass orders for its refund after giving him an opportunity of being heard and the petitioner shall be free to challenge the order of State Government as and when made. With these observations the SLP is disposed of.

6. While continuing on the post of Principal, the respondent was served with the impugned order (Annexure D) by which it was directed that he would be compulsorily retired with effect from the afternoon of 24-1-1989 in terms of Rule 74(b)(ii) of the Bihar Service Code.

7. The respondent challenged this order stating inter alia, that the order had not been issued in public interest and also alleged mala fide against various officers and further stated that prior to the service of notice, he was not paid three months' salary inasmuch as the notice having been served upon him 26th January, 1989 the same could not have taken effect from 24-1-1989, from which date the order of compulsory retirement was to take effect.

8. On behalf of the State, a counter-affidavit was filed stating in substance that a Committee consisting of the Chief Secretary, Home Secretary and Inspector-General, Prisons considered the cease of all officials of the Bihar Jail Service including the respondent, who had completed thirty years of service and had attained the age of fifty years and the respondent had been compulsorily retired pursuant to the recommendations of the Committee. Further it was stated that the respondent during his service in the Jail Department earned adverse remarks in the Annual Confidential Reports on his work from the very beginning which indicated that the overall service record of his was not good and his integrity was frequently indicated.

9. In this appeal, various points repeating the ones that had been stated in the main application are taken Mr. J.P. Shukla, learned Government Advocate has submitted that the learned Single Judge was not justified in holding that the order passed was bad in law for non-consideration of confidential remarks of last five years of the respondent's service. In this connection. Mr. Shukla has contended that the compulsory retirement is not a punishment by itself, rather, the Government in exercise of Rule 74(b)(ii) of the Bihar Service Code, is

competent to pass the order if there are materials to suggest that the overall performance of a public servant, who attained the age of fifty years and completed thirty years of service was not satisfactory. It has also been submitted that the confidential character rolls of the respondent from the very beginning of his service career are full of adverse entries inasmuch as on several occasions the displeasure of the Government for his unsatisfactory service were communicated. It has further been stated that a Committee consisting of high officials on a due consideration of all the facts, circumstances and adverse entries had recommended for compulsory retirement of the respondent which was accepted by the Government and, therefore, the respondent cannot assail it on the ground of mala fide or for any other reason.

10. So far the promotion of the respondent as Assistant Inspector- General, Prisons, II is concerned, the submission of Mr. Shukla is that this was an ad hoc promotion by way of stop-gap arrangement and later on, the respondent was transferred as Principal of Jail Training Institute, Hazaribagh, which is equivalent to the post of Bihar Jail Service (Junior Branch) and, therefore, the respondent on account of his reversion to his original cadre, cannot be allowed to say that on his promotion as Assistant Inspector-General of Prisons, the adverse entries earned by him prior to his promotion lost its significance.

11. The Annual Confidential Remarks of several years have been reproduced in the petitions (Annexure B series). It appears from the entries made in the confidential remarks that there are various columns for assessment of the work of a Government employee. It is true that adverse entries are there, but in certain field that respondent had earned good entries. In some of the confidential remarks, the assessing officers had observed that but for his short temper and tactlessness, he would have been very good officer of the Department. We do not propose to consider the confidential remarks item wise in detail in this appeal for the reasons given hereunder.

12. It is not in controversy that the respondent was posted as A.I.G., Prisons (ii) in August, 1983 which is admittedly a higher post. As stated above, according to Mr. Shukla, this promotion/appointment was on ad hoc basis which was also not concurred by the Public Service Commission.

13. Mr. Radha Mohan, learned Counsel for the respondent, on the other hand, has submitted that at the time of appointment of the respondent to a higher post all the entries recorded in his Annual Confidential Reports by then must have been taken into account and after the State Government found him fit to be appointed in a higher post, the order of promotion was passed. Further, it has been stated that there is no indication of any kind in the order of promotion (Annexure 1) that it was Ad hoc in nature nor is there anything to show that while posting him as A. I. G. Prisons there was any order that the respondent would carry the same scale of pay which he was drawing at the time of his promotion. In this connection, the promotion order has been referred to, which has already been quoted. It has also been stated that no paper has been filed to

show that the Public Service Commission had refused to concur with the proposal of the State Government posting his (respondent) as A. I. G., Prisons (ii) at Patna. It has been further contended that even in the order of transfer of the respondent, as Principal, Jail Training Institute, Hazaribagh in November. 1985 (Annexure 1 to the counter-affidavit of the original writ application) there is no mention of the fact that the respondent was reverted to his original cadre i.e. Bihar Jail Service, Junior Branch. So far as the Government decision dated 19-5-1987 that the post of the Principal will be equivalent to Bihar Jail Service (Junior Branch) is concerned, Mr. Radha Mohan has stated that this order was passed two years after the order of transfer of respondent as Principal and therefore, this decision will not in any way affect the claim of the respondent. In this connection, it has been pointed out that as no scale of pay was indicated in the order of transfer, he had to agitate this issue before this Court as well as the Supreme Court and both the Courts" ordered that he (respondent) should get the same scale of pay which he was entitled to as Assistant Inspector General, Prisons and that scale of pay was fixed after obtaining a report from the Accountant General. But even after the decision of the Government, the respondent was allowed to draw the pay scale of A. I, G., Prisons till the date of his premature retirement. The orders of this Court and Supreme Court in this regard have already been quoted which indicate that the respondent was allowed to draw the pay of A. I. G., Prisons.

14. The stand of Mr. Shukla, however, is that even if the promotion of respondent as A. I. G. (Prisons) is not considered to be an Ad hoc one, the State Government was competent to pass the order impugned after considering the overall performance of the respondent which was not a happy one. It is now well settled that while considering the question of premature retirement it may be desirable to make an overall assessment of the Government servant's record, but while doing that, more value should be attached to the Confidential Reports pertaining to the years immediately preceding such considerations see Brij Mohan Singh Chopra Vs. State of Punjab, .

15. The adverse entries and the assessment of the work and conduct of the respondent were available before the authorities while appointing him to a higher post. It can, therefore, be said that after considering all these, the respondent was given a higher post. Now what would be the effect of that promotion. The Supreme Court in the decision referred to above, observed that "It is now well-settled that adverse entries, if any, awarded to any employee lose their significance on or after his promotion to a higher post. "The Supreme Court after considering various decisions further observed that "This Court has consistently taken the view that old and stale entries should not be taken into account while considering the question of premature retirement; the entries of recent past of five to ten years should be considered in forming instead; the requisite opinion to retire a Government employee in public interest."

16. This being the position, the authorities should not have taken into account

the entries recorded in the Annual Confidential Report of the respondent prior to his appointment as Assistant Inspector General (Prisons) while passing the order of premature retirement. Mr. Shukla, however, has stated that recommendation of the Committee will indicate that some events subsequent to the respondent's appointment as A. I. G. (Prisons) had also been considered including the displeasure of the Government communicated to him for various lapses on the part of the respondent and therefore, it cannot be said that no fresh material was available before the authorities and the order of compulsory retirement was passed solely on the basis of the past adverse entries earned by the respondent prior to his promotion.

17. There is some difficulty in accepting this proposition. It is true that there are references of certain matters of the year 1986-87 in the recommendation of the Committee. But reading the recommendation as a whole, it will appear that the recommendation for his compulsory retirement was passed mainly on the adverse entries earned by the respondent before his appointment as Assistant Inspector General, Prisons. It further appears that certain enquiries were ordered against the respondent in view of some allegations, but it is an admitted position that the result of the enquiry(s) was not available before the Committee. That apart, it is not in controversy that the confidential reports of the respondent of last five years were not available either before the Committee or the authorities while recommending for his premature retirement or passing the order impugned. The principle laid down by the Supreme Court in this regard has already been quoted which says that the entries of recent past of five to ten years should be considered in forming the requisite opinion to retire a Government employee in public interest.

18. The position thus comes to this that (a) on account of the appointment/promotion of the respondent to a higher post, the adverse entries earned by him prior to his promotion had lost its significance (b) the other facts mentioned in the recommendation of the Committee were not sufficient for recommendation of respondent's premature retirement as the same was passed on the entries recorded against him prior to his promotion and the result of the enquiry was also not available before it, and (e) the confidential character rolls/entries of the last five years which ought to have been considered by the authorities, were also not available before it. It therefore, necessarily follows, that the order of premature retirement was passed without taking into account all the matters which are required for passing an order of premature retirement. In that view of the matter, there is no merit in this appeal and the same is accordingly dismissed.

19. It is however, open to the authorities to consider the issue afresh after taking into account the confidential remarks of the respondent which he had learned after his promotion to a higher post and other connected matters, if any, and pass an order in accordance with law. There shall, however, be no order as to costs.