
(2007) 04 PAT CK 0039
In the Patna High Court
Case No : LPA No. 933 of 2006

The State of Bihar and Others	Vs	APPELLANT
Dr. Indra Nand Jha and Another		RESPONDENT

Date of Decision : 19-04-2007

Acts Referred:

Citation : (2007) 3 PLJR 178

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : S.K. Ghosh and Nirmal Kumar Sinha, for the Appellant; Gyanand Roy for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—This is an appeal preferred by the State against the order passed by a learned Single Judge. By the order coming under appeal the writ petition filed by respondent No. 1 was allowed and the order of punishment, dated 27.9.1999 passed against him (and the other two consequential orders) were set aside, with liberty to the respondent authorities to proceed in the matter, in accordance with law. The impugned order is assailed on the ground that it is completely non-speaking. It states the facts of the case only fragmentally and does not give any reason whatsoever for allowing the writ petition and setting aside the punishment order passed against respondent No. 1.

2. The submissions made on behalf of the appellant-State cannot be said to be incorrect. The order of the writ court is manifestly very brief. All that it states for setting aside the punishment order is "Considering the facts and circumstances of the case this application is allowed". It does not take note of the submission made on behalf of the writ petitioner or the reply of those submissions advanced from the State and it is, therefore, difficult to follow what weighed with the writ court to interfere in the matter and to set aside the punishments awarded to the petitioner.

3. Ordinarily we would have set aside the order coming under appeal and remitted the matter for fresh consideration. We, however, refrain from doing so for two reasons: one, it is not an appeal against an order passed by an inferior court but an internal court appeal in which remands are conventionally made for very compelling reasons. The other is that the counsel for respondent No. 1 writ petitioner prayed before us that he might be heard on the merits of the writ petition. The State counsel has no objection to this prayer. The matter has become quite old and a remand would unnecessarily cause further delay. We, therefore, chose the second course and proceeded to hear the writ petition on merits.

4. The facts of the case are brief and without controversy. The petitioner while he was posted as the Medical Officer, Sadar Hospital, Madhubani on 2.4.1992 held post mortem on the bodies of three people killed in a case that was registered as Madhwapur P.S. Case No. 70 of 1992. There were strong complaints and a hue and cry was made against the post mortem reports submitted by the petitioner. As a result, the authorities got the bodies subjected to a second post mortem by a medical Board. The reports given by the Medical Board apparently differed fundamentally from the reports given by the writ petitioner. He was accordingly charged with giving false and manipulated post mortem reports and was put under suspension on 25.7.1992. A copy of the charges were given to him on 1.10.1992 and he was subjected to a disciplinary proceeding. The charges were established in the enquiry report dated 9.9.1993 but at that stage the matter seems to have lay dormant for about two and a half years. A second show cause notice was given to the petitioner on 16.4.1996. He gave his reply on 15.10.1996. It appears that a decision was taken for his dismissal from service. The Chief Minister gave his approval to the decision on 16.4.1997, following which the concurrence of the Bihar Public Service Commission was asked for on 28.4.1997. The Commission gave its consent on 6.6.1997 but before the order of dismissal was passed the petitioner superannuated from service on 30.11.1997. His suspension was revoked vide order dated 12.8.1998 only after his superannuation.

5. After superannuation when the issue of his retiral dues remained unsettled the petitioner came to the court in C.W.J.C. No. 2938 of 1999 which was disposed of by order dated 30.11.1999. In that order the court pointed out that there was no statutory provision to withhold the amounts of G.P.F., Leave Encashment or Group Insurance. It was further observed that if a proceeding was initiated before retirement it could be converted into one under Rule 43(b) of the Bihar Pension Rules but in any event till a final decision was taken in the proceeding the authorities could not withhold full pension and gratuity; at least 90% of the pension and gratuity were to be paid provisionally. The court, accordingly, directed the concerned respondents to pay to the petitioner full amounts of G.P.F., Leave Encashment and Group Insurance and 90% of pension and gratuity within two months from the date of receipt/production of a copy of that order.

6. As regards the pending proceeding the court directed to conclude it within a period of six months from the date of receipt/production of a copy of the order. It was further directed that in case the proceeding was not concluded within six months from the date of receipt/production of a copy of the order it would stand quashed and the authorities would be liable to pay the balance 10% of the pension and gratuity within one month thereof.

7. As regards the claim of time bound promotion the court directed that it should be considered within three months of the completion of the proceeding and appropriate order in that regard should be passed and communicated to the petitioner immediately.

8. Later on, the petitioner filed a contempt petition, being M.J.C. No. 2904 of 2000, alleging disobedience of the court's order in C.W.J.C. No. 2938 of 1999. In the show cause filed in the contempt case the order dated 27.9.1999 was enclosed as Annexure-A. The contempt petition was accordingly, dismissed with liberty to the petitioner to challenge the punishment order dated 27.9.1999. It was then that the present writ petition was filed challenging the punishment order dated 27.9.1999.

9. Mr. Gyanand Roy, counsel for the petitioner submitted that the earlier writ petition filed by the petitioner (C.W.J.C-No. 2938 of 1999) was disposed of on 30.11.1999 but in that case the court was not informed about the punishment order purportedly passed on 27.9.1999. He strenuously argued that the difference of dates would indicate that the punishment order was ante-dated and it was actually passed after the filing of the contempt petition.

10. On the basis of the difference in dates alone we are not prepared to hold that the impugned punishment order is ante-dated. We are fully accustomed with the way the State's cases are conducted in the court. It is not unknown that due to some lapse in the department or in the lawyer's office some important document is not produced in time on behalf of the State. Simply due to non-production of the punishment order at the time of disposal of the earlier writ petition it cannot be presumed that it was not in existence at that time and it was ante-dated by the authorities.

11. Otherwise, we fail to see any illegality or infirmity in the order. It is well settled that a disciplinary proceeding initiated while the concerned employee was in service, on his superannuation gets converted into a proceeding under Rule 43(b) of the Pension Rules. The order of punishment is passed under that provision. The direction to withhold salary, beyond subsistence allowance, for the period of suspension, and the denial of promotion in 2.5% grade was also appropriate having regard to the claim of the petitioner.

12. On hearing Mr. Gyanand Roy, counsel for the petitioner and the State Counsel, we find no infirmity in the impugned order. The writ petitioner is not entitled to any relief. The writ petition is dismissed and this order is substituted in place of the order coming under appeal. In the result, this appeal is allowed.

Rekha Kumari, J.

13. I agree.