

(2015) 07 PAT CK 0137

In the Patna High Court

Case No : LPA No. 1571 of 2014 in CWJC No. 12013 of 2012

The State of Bihar and Others

APPELLANT

Vs

Shashi Bhushan Prasad

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Constitution of India, 1950 — Article 311, 311(1)

Citation : (2015) LabIC 4646 : (2015) 4 PLJR 127

Hon'ble Judges : L. Narasimha Reddy, C.J. and Sudhir Singh, J.

Bench : Division Bench

Advocate : Satish Narain Singh, for the Appellant; Chittaranjan Sinha and Vinay Ranja, for the Respondent

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, C.J.

1. This Letters Patent Appeal raises an important question of law. It is in relation to the interpretation of Article 311(1) of the Constitution of India as well as Clause 825 of the Bihar Police Manual. The sole respondent herein was appointed as Sub-Inspector in Bihar Police, in the year 1994. The order of appointment dated 21st August, 1994 was signed by the Inspector General of Police (Administration).

2. Disciplinary proceedings were initiated against the respondent alleging certain acts of misconduct. Charge-sheet was issued and thereafter an enquiry officer was appointed. In his report, the enquiry officer recorded findings to the effect that the charges are proved. Taking the same into account, the Deputy Inspector General of Police, Tirhut Division, the 4th respondent-appellant herein, passed the order dated 7.7.2010 dismissing the respondent from service.

3. Challenging the same, the respondent filed an appeal before the Inspector General of Police, Tirhut Division, 3rd respondent herein and on dismissal of that, he filed a memorial before the Director General of Police, the second respondent

herein. That was dismissed and thereafter the respondent filed CWJC No. 12013 of 2012 before this court.

4. The principal ground urged by the respondent was that he was appointed by the Inspector General of Police whereas the order of dismissal was passed by the Deputy Inspector General of Police, an officer, inferior in rank to I.G. He placed reliance on Article 311(1) of the Constitution of India as well as Rule 825 of the Bihar Police Manual, 1978.

5. The plea of the appellant, i.e. the State, was that Deputy Inspector General was designated as the disciplinary authority for the post of Sub-Inspector, even when the respondent was appointed, and in that view of the matter, no illegality can be said to have crept into the impugned order. It was also pleaded that the issuance of the order of appointment by the Inspector General of Police was only a matter of convenience and at the relevant point of time Deputy Inspector General of Police alone, was the appointing authority.

6. The learned Single Judge allowed the writ petition through order dated 13.9.2013 taking the view that the order of dismissal, as also the order in the memorandum of appeal are contrary to Article 311(1) Constitution of India. He remanded the matter to the appointing authority with the direction that he shall issue show-cause notice to the respondent without being influenced by any earlier orders. The same is challenged here in this Letters Patent Appeal.

7. Shri Satish Narain Singh, learned counsel for the appellants, submits that the learned Single Judge has taken a hypertechnical view of the matter and did not take into account, the specific provision of law, namely, Rule 825(c) of the Bihar Police Manual which designated the Deputy Inspector General of Police as disciplinary authority. It is also pleaded that Rule 656 of the Bihar Police Manual which deals with the appointment also mentions that the Deputy Inspector General of Police shall be the appointing authority and the issuance of order of appointment to the petitioner by the Inspector General was only in the light of certain guidelines issued at the relevant point of time.

8. Shri Chittaranjan Sinha, learned senior counsel representing the respondent, on the other hand, submits that once it is not disputed that the respondent was appointed by Inspector General of Police, the question of any officer below the rank of IG Police passing any order against the respondent does not arise. He contends that not only Article 311 of the Constitution of India, but also sub-clause (a) of Rule 825 of the Bihar Police Manual gives the protection in this behalf.

9. It is a matter of record, that the respondent was appointed as Sub-Inspector in the year 1994, and the order of appointment was signed by Inspector General of Police. The service conditions of the Police Officers in the State of Bihar are governed by the Bihar Police Manual. Clause 656 of the Manual deals with the selection and appointment of Sub-Inspectors. The Deputy Inspector General is mentioned as the appointing authority. The selection is to be undertaken by the

Public Service Commission. It appears that there was some amendment of the procedures in the year 1993 wherein the selection process was assigned to a committee, comprising of Deputy Inspector General and Inspector General and certain other officers. It is in this context, that the order of appointment was issued to the respondent by the Inspector General of Police.

10. Clause 825(c) remained unchanged, and even when the respondent was appointed, the Deputy Inspector General of Police was designated as the disciplinary authority and the provision continues to be so even now. The provision reads:--

"825. Officer empowered to impose punishment.--(a) No police officer shall be dismissed or compulsorily retired by an authority subordinate to that which appointed him.

(b) The Inspector General may award to any police officer below the rank of Deputy Superintendent any one or more of the punishments in Rule 824.

(c) A Deputy Inspector General may impose on any police officer subordinate to him and below the rank of Deputy Superintendent any of the punishments in Rule 824 except dismissal, compulsory retirement and removal in the case of an Inspector.

(d) A Superintendent may impose on any police officer subordinate to him and of and below the rank of Sub-Inspector any or more of the punishments in Rule 824 except dismissal, removal and compulsory retirement in the case of Sub-Inspector or Assistant Sub-Inspector. It shall be kept in mind that if any enquiry has been initiated by the District Magistrate, a report of the result shall be sent to him for information. If required, the file of departmental proceeding shall also be sent with it.

(e) The punishments noted in Rules 824(h) and (i) can be awarded by S.D.P.O. also but its record shall be kept in the office of Superintendent and it shall also be seen that different yardsticks are not used in awarding punishments.

(f) A list of officers competent to give punishments or ordering of suspension according to Act V, 1861 is given in Appendix 84."

11. At the outset, we need to note that Clause 825(a), just reflects the principles contained in Article 311 of the Constitution, which reads:--

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.--(1) No person who is a member of a civil service of the Union or an All-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of

those charges:

Provided that where it is proposed after such inquiry, to impose upon him, any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply--

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in the rank shall be final."

12. It becomes abundantly clear that whatever be the circumstances, once a person is appointed by a particular authority, he cannot be dismissed by any officer inferior in rank, to the one, who appointed him. In a given case, the rules may have undertaken change after a person is appointed to a service resulting in the position of the appointing authority being downgraded. That, however, does not make any difference for application of Article 311 of the Constitution. What one has to see is, as to who was the officer, who signed the order of appointment of the employee. If order of punishment is signed by the officer, who happens to be the inferior in rank, the order needs to be set aside being violative of Article 311 of the Constitution. The same situation obtains in the instant case. In comparison to that, the case of the appellant is strengthened by Clause 825(a). When such is the legal and indisputable factual position, no exception can be taken to the order passed by the learned Single Judge.

13. However, in view of the amendment that took place in the Rules we need to slightly amend the order of the learned Single Judge holding that the Inspector General was the officer who passed the order of appointment shall continue the disciplinary proceedings.

14. We, therefore, dispose of this Letters Patent Appeal, setting aside the order of dismissal of the petitioner and directing that the matter be remitted to the 3rd respondent. He shall continue with the proceedings from the stage at which the enquiry officer submitted his report. The 3rd respondent shall pass order independently and being uninfluenced by any of the proceedings which have taken place so far. In case, he exonerates the respondent of the charges, he shall

be entitled to be reinstated, with all benefits. If any punishment is imposed, he shall not be entitled to claim any back wages.

15. Interlocutory application, if any, shall also stand disposed of. There will be no order as to costs.