

(2012) 09 PAT CK 0024

In the Patna High Court

Case No : LPA No. 441 of 2012 In CWJC No. 7031 of 2007

The State of Bihar and Others

APPELLANT

Vs

Shyam Kishore Sinha

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)
Penal Code, 1860 (IPC) — Section 307, 326

Citation : (2012) 4 PLJR 887

Hon'ble Judges : R.M. Doshit, C.J.;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Ashhar Mustafa and Santosh Kumar, for the Appellant; Rajendra Prasad Singh and Vikas Kumar, for the Respondent

Judgement

R.M. Doshit, C.J.—Feeling aggrieved by the judgment and order dated 2nd February, 2012 passed by the learned single Judge in CWJC No. 7031 of 2007, the respondents State of Bihar and others have preferred this Appeal under Clause 10 of the Letters Patent. The respondent writ petitioner joined the service under the State of Bihar as a Clerk on 5th November, 1986. At the relevant time, a criminal prosecution in connection with Kako P.S. Case No. 64 dated 19th July, 1981 for offence punishable u/s 307 IPC was pending against the writ petitioner. Unaware of the same, the writ petitioner was appointed as a Clerk in 1986. By the judgment and order dated 11th September, 1989, the trial court convicted the writ petitioner for offence punishable u/s 307 IPC and sentenced him to undergo rigorous imprisonment for six years. The said conviction and sentence were confirmed in Appeal. In Criminal Revision No. 347 of 1995 filed before this Court, on 12th November, 1999, the conviction was altered to one u/s 326 IPC, and the sentence was reduced to rigorous imprisonment for one year and a fine of Rs. 500/-. Pursuant to the said order, the writ petitioner surrendered and underwent the sentence imposed upon him.

2. In view of his conviction and his incarceration, by order dated 2nd February,

2001, the writ petitioner was deemed to have been under suspension with effect from 11th April, 2000 (the date of his imprisonment). On 4th April, 2002 the writ petitioner was directed to show cause why for his conviction and imprisonment in a criminal case he should not be dismissed from service. Pursuant to the enquiry held against the writ petitioner, he was dismissed from service on 16th July, 2005. The said order was confirmed in Departmental Appeal.

3. Feeling aggrieved, the writ petitioner approached this Court under Article 226 of the Constitution in above CWJC No. 7031 of 2007.

4. The learned single Judge has allowed the writ petition. According to the learned single Judge, the writ petitioner was not under obligation to disclose the factum of the pending criminal prosecution at the time of his entry in service; nor was he under obligation to inform the authority about his conviction and sentence and imprisonment; the incident in question was of the date prior to his employment which had no impact on the administration; as employee he had good service record. The learned single Judge also observed that the incident had occurred on the spur of a moment and the assault was unintentional. The writ petitioner, therefore, could not have been dismissed from service for the act not related to his service or not having impact on his service. Consequently, the learned single Judge has directed the appellants to reinstate the writ petitioner in service with all consequential benefits including arrears of salary. Therefore, this Appeal.

5. Learned advocate Mr. Ashhar Mustafa has appeared for the appellants. He has submitted that irrespective of the fact that the incident in question had occurred prior to his entry in service or had no connection whatsoever with the service or it had no impact on the service of the writ petitioner, Article 311(2) of the Constitution empowers the State Government to dismiss, remove or reduce in rank such person on mere conviction. All that the appellants were required to follow was to give a notice to the employee and to consider the mitigating circumstances, if any.

6. Mr. Mustafa has submitted that in the present case after giving the charge-sheet and after giving adequate opportunity of defence to the writ petitioner, the disciplinary authority had dismissed the writ petitioner from service.

7. Mr. Mustafa has further submitted that it is not relevant whether the incident in question occurred prior to or beyond the period of employment; nor it is relevant that the incident in question had no connection with the service of the employee. The only relevant fact is that the employee has been found to be guilty of offence for which he has been convicted and sentenced. Except for the mitigating circumstances, the employer is not required to look beyond the order of conviction and the sentence.

8. In support of his submission, Mr. Mustafa has relied upon a Division Bench decision of the Assam High Court Jagadindra Nath Gupta Vs. Inspector General of Assam Rifles and Others, and of the Hon''ble Supreme Court Govinda Menon Vs.

Union of India (UOI), .

9. Mr. Mustafa has also relied on the Constitutional Law of India by H.M. Seervai, Volume 3, IV Edition. He has relied upon paragraph 27.64G (P. 3035).

10. The appeal is contested by learned counsel Mr. Rajendra Prasad Singh appearing for the respondent writ petitioner.

11. Mr. Singh has submitted that it is required to establish that the incident in question had relation with the service of the employee and that such incident had an impact on the service of the employee. He has submitted that in the present case not only the incident was of the date prior to the date of employment, but it was on account of personal dispute amongst the members of the family and had no connection whatsoever with the service of the writ petitioner. Besides, the service of the petitioner has remained spotless. The submission of Mr. Singh is that the learned single Judge has rightly held that for such an incident, the writ petitioner could not have been dismissed from service and has rightly ordered reinstatement of the writ petitioner in service with all consequential benefits.

12. In support of his submission, Mr. Singh has relied upon the judgment of the Hon"ble Supreme Court The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, .

13. Article 311 of the Constitution imposes a bar upon the Government to the effect that no person who is a member of a civil service be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges. The proviso to Article 311(2) provides for an exception to the aforesaid general rule. It exempts the Government from the rigours of Article 311(2) of the Constitution in respect of a person who is convicted on a criminal charge. Such a person is not required to be given hearing on quantum of punishment. Thus, the disciplinary enquiry as envisaged by Article 311(2) of the Constitution has been done away with in respect of the employee convicted of criminal charge.

14. The question is whether or not such conviction ought to be in respect of an incident related to the discharge of duty or whether or not such offence should have been committed in due discharge of duty.

15. The Hon"ble Supreme Court as early as in 1967 in the matter of S. Govinda Menon (supra) has held, "In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship.....The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether

the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant

16. The above view was expressed by the High Court of Assam as early as in 1959 in the matter of Jagadindra Nath Gupta (supra). The Hon'ble Chief Justice Sarjoo Prasad, speaking for the Bench, observed, "In our opinion such a limited construction could not be put upon proviso (a) to Art. 311(2) of the Constitution. The plain grammatical meaning of the provision does not admit of such a construction. The "ground of conduct" mentioned therein would refer to a conviction on a criminal charge both before and after the appointment. If the authorities have knowledge of the conviction earlier they might as well refuse to appoint the person concerned; but if for some reason they cannot get the information earlier until after the appointment, they may take action and discharge him on that basis even without the elaborate procedure of Art. 311 of the Constitution, as the proviso will be attracted to the case".

17. In the aforesaid matter of T.R. Challappan, a similar issue of imposition of punishment pursuant to the conviction and the sentence recorded by criminal court was the matter at issue. The Hon'ble Court considering the scope of Article 311(2) proviso (a) of the Constitution held, "This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth".

18. Thus, for the purpose of exercise of power conferred by proviso to Article 311(2) of the Constitution, there is no condition that the offence for which the employee is convicted and sentenced had been committed not in discharge of duty or had been committed prior to the entry in service. Once, the Government servant is convicted of a criminal offence, the appointing authority has a right to punish such a Government servant without holding enquiry envisaged by Article 311(2) of the Constitution and without giving him opportunity of making representation on the penalty proposed. But certainly, the disciplinary authority will take into consideration the attending circumstances and will afford opportunity to the employee to make representation bringing forth the mitigating circumstances. In the present case, as it is brought on record, the factum of pending criminal prosecution was not brought to the notice of the appellants at the time the writ petitioner was employed nor was that fact made known to the appellants at any time during the service. The appellants came to know about it only when the writ petitioner surrendered to serve the sentence imposed upon him.

19. In our opinion, the appointing authority was absolutely justified in initiating the proceedings in exercise of power conferred by the provision to Article 311(2)

of the Constitution in connection with the conviction recorded against the writ petitioner and the sentence imposed upon him.

20. However, the appellants were required to consider any mitigating circumstance that existed. In the present case, the writ petitioner had spelled several mitigating circumstances; (1) that the offence in question was not planned but was committed on the spur of a moment; (2) the offence was in respect of the private dispute of the writ petitioner having no relevance whatsoever with the employment; (3) the offence was committed long before he entered in service; and (4) all throughout, his service record was clean.

21. In our opinion, the learned single Judge is not right in holding that the order of dismissal from service was vitiated solely on the ground that the offence in question was committed by the writ petitioner prior to his entry in service and that he was under no obligation to inform the authority about the pending prosecution or the conviction or his imprisonment. As held by the Hon'ble Supreme Court, it is the conduct of the employee which is relevant. If such conduct brings disrepute to the employee or the employer that also should be a good ground for imposing punishment.

22. In the present case, however, we find that the order of dismissal from service has been made against the writ petitioner solely on the factum of his conviction and imprisonment without considering the aforesaid mitigating circumstances.

23. For the aforesaid reason, we allow this Appeal partially. We confirm the order of the learned single Judge setting aside the order of punishment and directing the reinstatement of the writ petitioner in service. However, the writ petitioner will not be entitled to the consequential benefits as allowed by the learned single Judge. The service of the writ petitioner from the date of his dismissal on 16th July, 2005 till the date he is reinstated in service will be treated as the period of extraordinary leave without pay. The writ petitioner will be reinstated in service as early as possible, but not later than 15th October, 2012.

24. In the event, the appellants fail to reinstate the writ petitioner in service by 15th October, 2012, the writ petitioner will be entitled to salary and other service benefits commencing from 15th October, 2012.

25. The disciplinary authority/appointing authority will be at liberty to impose suitable punishment other than dismissal or removal from service upon the writ petitioner pursuant to the aforesaid conviction and imprisonment of the writ petitioner after considering the aboveresferred mitigating circumstances.

26. Interlocutory Application stands disposed of.

27. The parties will bear their own costs. The Registry will send copy of this order to the appellant nos. 3 and 4 forthwith.