
(1993) 05 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1287 of 1993

Vidya Bhushan Singh

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 21-05-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 2 PLJR 432

Hon'ble Judges : S.B. Sinha, J;Om Prakash, J

Bench : Division Bench

Advocate : Shyama Prasad Mukherjee and Kapil Deo Singh, for the Appellant;
Ram Balak Mahto, R.S. Roy and B.B. Singh for the State, for the Respondent

Judgement

S.B. Sinha, J.—In this application the petitioner has questioned an order dated 30th January, 1993 as contained in Annexure-1 to the writ application whereby and whereunder he has been placed under suspension. The ground upon which the aforementioned order is questioned inter alia is that although the petitioner was working in the capacity of Deputy Secretary, Housing Department, Government of Bihar and thus was not posted in the Building Construction Department, the impugned order has been passed at the instance of the Minister, Building Construction Department, who is not his controlling authority.

2. The petitioner has also alleged malafide as against the Minister incharge of Housing Department.

3. In order to appreciate the points involved in this case, the fact of the matter may briefly be noticed.

4. The petitioner was posted as Deputy Secretary, Housing Department on 27.2.1991 (Annexure-2). He was however, allocated additional work in Building Construction Department on 30.4.92 in respect whereof a protest was made to Personnel Department on 20th May, 1992.

5. Allegedly on 21.5.1992 and upto 12 noon of 22.5.92 the Minister Uncharge of

Building Construction Sri Ram Bilash Mishra searched for the petitioner but did not find him.

6. By reason of a note-sheet dated 22.5.1992 as contained in Annexure-7 to the writ application the petitioner was asked to report to the Minister of Building Construction Department as to whether he was on leave or was absent from duty without obtaining any leave. From Annexure-8 to the writ application it appears that the petitioner in reply to the said query drew up a note sheet addressed to the Secretary alleging that he was not under the administrative control of the Minister, Building Construction Department and he is only answerable to the Minister of Housing Department. He however, admitted in the said note-sheet that work is being taken from him by the Building Construction Department against his wishes. He however, stated that if any order in proper form is received by him asking for clarification, he would reply thereto.

7. From a perusal of the impugned order dated 30th January, 1993 it appears that the petitioner was placed under suspension inter alia on the ground of indiscipline, in terms of Rule 49A of the Bihar Civil Service (Classification Control and Appeal) Rules.

8. Mr. Shyama Prasad Mukherjee, the Learned Counsel appearing on behalf of the petitioner has submitted that the petitioner was not absent from duty on the day in question as he had disposed of many Tiles on that date.

The Learned Counsel further submitted that even in the counter affidavit the allegations of malafide have not been traversed. It was further submitted that from Annexure-8 to the writ application it would appear that the petitioner did not refuse to submit his explanation and therein only he had made a statement of fact to the effect that he was not under the administrative control of the Minister of Building Construction Department but under the Minister of Housing Department. It was further submitted that the procedure laid down for asking for explanation had not been followed.

9. It was, therefore, submitted that the impugned order has been passed on non-existing ground. The Learned Counsel drew our attention to the allegations of malafide made in the writ application to the effect that as the petitioner's wife fought an election as against the respondent No. 4, and the matter is pending consideration before the Supreme Court of India, he is being harassed for political reasons.

10. It was, therefore, submitted that the impugned order has been passed because of the political activities of the petitioner's wife.

11. The Learned Counsel in support of his contention has relied upon a decision of the court in 1974 BLJR 6, Pratap Singh vs. State of Punjab reported in AIR 1964 S.C. page 72 and M. Sankaranarayanan v. State of Karnataka reported in 1993(1) S.C.C. 55.

12. The learned Advocate General appearing on behalf of the respondents,

however submitted that in this case no malice on fact has been attributed as against the Minister Incharge of the Building Department. He further submitted that under the rules of Executive Business, Building Construction and Housing Department is one and the same department but two different ministers are incharge of the different section of the department.

Our attention has further been drawn to the charge-sheet which is contained in Annexure-A to the counter affidavit.

13. In this case the respondent No. 4 is Sri Jagadanand Singh who is Minister Incharge of Water Resources Department. The petitioner's wife fought the election only against the respondent No. 4 and not against the respondent No. 3 who is Cabinet Minister Incharge of Building Construction Department.

14. From a bare perusal of the note-sheet which is contained in Annexure-8 to the writ application equivalent to Annexure-B to the counter affidavit, it is evident that although the petitioner was posted as Deputy Secretary of the Housing Department, he was given the additional charge of looking after some works of Building Construction Department. It is clear from Annexure-8 to the counter affidavit as also Annexure-7 to the writ application that the petitioner was being searched for by the respondent No. 3 but he was not found. According to the respondent No. 3 a delay occurred in taking some important decisions owing to absence of the petitioner.

15. It is only in this situation the respondent No. 3 directed the Secretary of this Department to call for an explanation. The petitioner in his reply refused to give an explanation only on the ground that he was not under the administrative control of the Minister Incharge of the Building Construction Department.

16. Mr. Mukherjee, although submitted that in this case the procedures for calling for an explanation had not been followed but he has failed to show as to what those procedures are and whether the same are statutory in nature.

In this situation it cannot be said that the petitioner had been able to prove that the order of suspension had been passed either malafide or on a non-est ground.

17. The rules of Executive Business of the Government of Bihar clearly states that the Building Construction and Housing Department is one and the same department. For administrative reasons, it may be that the same has been bifurcated into two wings but in the eye of law both the Housing Wing and the Building Construction Wing are part of the same department.

18. It is true that an order passed malafide is no order in law. Similarly an order which was passed having been actuated by malice is no order in the eye of law as has been held by the Supreme Court in the case of Pratap Singh vs. State of Punjab reported in 1964 S.C. 72.

19. The Learned Counsel for the petitioner has placed a strong reliance in M. Sankaranarayanan, IAS Vs. State of Karnataka and others, wherein it has been

held as follows :

After considering the respective contentions of the Learned Counsels appearing for the parties, it appears to us that the appellant has not been able to lay any firm foundation warranting a finding that the impugned order of transfer was passed malafide and/or for an oblique purpose in order to punish the appellant and or to humiliate him. The pleading of the appellant before the Central Administrative Tribunal only indicate that some of his suggestions in the matter of posting of senior bureaucratic Officers of the State had not been accepted by the present Chief Minister of the State. Such facts alone do not constitute any foundation for a finding that because the appellant was not agreeable to oblige the Chief Minister by accepting all his suggestions and pulling up notes to that effect he had incurred the displeasure of the Chief Minister and the impugned orders had been passed not on administrative exigencies but only to malign the appellant and to humiliate him. It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of malafide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. In the instance case, we are unable to find that there are sufficient materials from which a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn. It is an admitted position that the Chief Secretary and the Chief Minister had differences of opinion on a number of sensitive matters. If on that score, the Cabinet and the Chief Minister had taken a decision to relieve the appellant from the post of Chief Secretary and post a very senior Officer of their confidence to the post of Chief Secretary, it cannot be held that such decision is per se illegal or beyond the administrative authority. The position in this regard has been well explained in Royappa case by this Court.

The aforementioned decision, therefore, do not support the content ion of the petitioner.

20. In a recent decision in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, it had been held :

The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the Quasi-Judicial Authorities are bound to observe. It is true that the distinction between a quasi Judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . Even so the extent of Judicial scrutiny/Judicial review in the case of administrative action cannot be larger than in the case of quasi judicial action. If the High Court cannot sit as an appellate authority over the decisions and orders of quasi judicial authorities it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities, they

have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred" (Lord Diplock in *Secretary of State for Education v. Tameside Metropolitan Borough Council*- 1977 AC 1014 at 1064). The court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the Court intervene. To quote the classic passage from the judgment of Lord Greene MR in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* 1948 (1) KB 223 229.

21. It is also true that this Court cannot uphold an order which has been passed by an authority in abuse of his power, as was the case in 1974 BLJR 6.

22. However, in this case the petitioner on his own showing has prime facie made out a case of in-subordination inasmuch as admittedly he had been looking after some works of the Building Construction Department and thus in relation to such works he was answerable to respondent No. 3.

23. In this case we are not concerned with the merit of the matter. The question as to whether the petitioner has committed any misconduct or not can be and has to be gone into in the departmental proceeding.

24. Rule 49A of the Bihar Civil Services (Classification, Control and Appeal) Rules empowers the appointing authority or any authority to which it is subordinate or the Governor by general or special order, to place a Government Servant under suspension, where disciplinary proceeding against him is contemplated or is pending.

25. The impugned notification as contained in Annexure-1 has been issued under the orders of the Government of Bihar.

26. It is now well known that suspension is not a punishment.

An order of suspension can be quashed by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India if the same is malafide or has been issued on the ground which is wholly non-est or has been issued for unauthorised purposes.

27. As the contention of the petitioner in this regard has not been found favour with us, we cannot quash the order of suspension but having considered the matter in its entirety we are of the view that in the peculiar facts and circumstances of the case and particularly in view of the fact that the petitioner may have a genuine belief that he being not under the administrative control of the respondent No. 3 was not answerable to him; the State may reconsider the matter.

28. We are further of the view that a responsible Officer holding the rank of

Deputy Secretary should not be placed under suspension on trifling matters.

29. However, it is not in dispute that the State has itself issued various circular letters to the effect that departmental proceeding as against an employee should be concluded within a period of three months. The petitioner has been placed under suspension by an order dated 30th January, 1993 and thus more than three months periods have already elapsed. In this situation, we direct the State to conclude the departmental proceeding as against the petitioner, if any as early as possible and not later than two months from the date of the receipt of a copy of this order. But in the event the departmental proceeding is not concluded within the aforementioned period, the order of suspension as against him will stand revoked.

30. The petitioner shall however, it is needless to say, render all co-operation with the authorities concerned in the aforementioned departmental proceeding. This application is disposed of with the aforementioned observations, but without any order as to costs.

Om Prakash, J.

I agree.