

(2016) 08 PAT CK 0044

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.109 of 2015

Vijay Kumar Sinha

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Bihar Police Manual, 1978 — Rule 840(b)(5)

Citation : (2016) 4 BLJud 335

Hon'ble Judges : Mr. Jyoti Saran, J.

Bench : Single Bench

Advocate : Mr. Ratan Prasad Sinha and Mr. Raja Ram Mishra, Advocates, for the Petitioner; Ms. Nivedita Nirvikar, G.A.7 Mr. Manoj Kumar, A.C. to G.A.7, for the Respondents

Final Decision : Allowed

Judgement

Mr. Jyoti Saran, J. (Oral) - Heard Mr. Ratan Prasad Sinha, learned counsel for the petitioner and Ms. Nivedita Nirvikar, learned G.A.7 for the State.

2. In the nature of order which this Court proposes to pass, I would not be required to delve into the merits of the case. Suffice it to say that a departmental proceeding was initiated against the petitioner who was holding the post of Sub Inspector of Police. Charge-sheet was served on the petitioner on 10.6.2012, enquiry held in which the charges were upheld and an order of dismissal was passed by the Deputy Inspector General of Police, Darbhanga on 12.6.2014. The petitioner initially filed an appeal before the Director General of Police, Bihar, Patna on 3.7.2014. Certain additional grounds were added to the pending appeal on 21.7.2014. The Office of the Director General of Police, Bihar, Patna informed the petitioner on 22.8.2014 that the appeal was not maintainable and would lie before the Inspector General of Police, Darbhanga Range. The petitioner while filing an appeal in compliance of such direction issued from the office of the Director General of Police, before the Inspector General of Police, Darbhanga Range, Darbhanga, also filed an application before the Director General of Police

on the same day i.e. 29.8.2014 requesting him to dispose of the appeal. While the Director General of Police treated the appeal filed by the petitioner as a memorial and disposed it of on maintainability on 13.11.2014 taking note of the appeal already filed by the petitioner and pending before the Zonal Inspector General of Police, Darbhanga Range, on the other hand the Zonal Inspector General of Police, Darbhanga Range consigned the appeal filed by the petitioner, by relying upon the order passed by the Director General of Police on the appeal filed by the petitioner earlier which was treated as a memorial. The grievance of the petitioner is that he has been rendered remediless for each of the two authorities by shifting the burden on the other, has left him clueless.

3. The situation existing gave rise to an issue as regarding the forum before whom an appeal would lie. Mr. Sinha relied upon a Bench decision of this Court reported in 1992 (1) PLJR 502 (Ram Anugrah Singh v. State of Bihar and others) to submit that an appeal against the order of the Deputy Inspector General would lie before the Director General of Police. In the said decision, a Bench of this Court while examining the provisions underlying the Bihar Police Manual and the Police Act, 1861 (hereinafter referred to as "the Act") had proceeded to hold that in absence of any authorization to the Inspector General of Police under "the Act" or the Rules, the appellate power would exclusively vest in the Director General of Police. Considering the legal position existing in view of the judgment of this Court in Ram Anugrah Singh (supra), the parties were requested to address the Court on the issue for though it is admitted that the petitioner was entitled to a hearing but it is the forum which was put to dispute and required to be determined.

4. Ms. Nirvikar learned State counsel has produced a notification of the State Government dated 13.8.2001 whereby several amendments were incorporated in the Bihar Police Manual in exercise of power vested under Article 309 of the Constitution of India read along side the provisions of the Police Act, 1861 and the Bihar Police Manual, 1978. In so far as the issue at hand is concerned, Ms. Nirvikar has invited the attention of this Court to the amendment incorporated vide Clause (5) of the Notification whereby Rule 840 ([k) of the Bihar Police Manual stands amended to provide for appellate authority in the following manner.

"840 [k & c[kkZLrxh] lsok ls gVk;s tkus] iafDrP;qfDr] izksUufr ;k fu;rdkfyd osru o`f) dh jksd] osru dh gkfu lfgr fuyEcu] fof"k"Vrk ;k fo"ks"k miyfC/k okys fdlh in ls gVk;s tkus okys vkns"k ds fo:) gj ,d ekeys esa ,d vihy fuEufyf[kr ds le{k nk;j dh tk ldsxhA

v/kh{k d ds vkns"k ds fo:) vkj{kh mi&egkfujh{k d ds le{k] vkj{kh mi&egkfujh{k d ds ewy vkns"k ds fo:) iz{ks=h; vkj{kh egkfujh{k d@vij vkj{kh egkfuns"k d ds le{k]

iz{ks=h; vkj{kh egkfujh{k d@vij vkj{kh egkfuns"k d ds ewy vkns"k ds fo:) egkfuns"k d ,oa vkj{kh egkfujh{k d ds le{k] egkfuns"k d ,oa vkj{kh egkfujh{k d ds

ewy vkns"k ds fo:) LFkkuh; ljdkj ds le{kA"

5. In reference to the amendment so incorporated in the Bihar Police Manual in exercise of powers under Article 309 of the Constitution read along side the provisions of the Police Act and the Bihar Police Manual, it is contended by Ms. Nirvikar learned State counsel that the appropriate authority in the present case would be the Zonal Inspector General of Police, since the order of dismissal has been passed by the Deputy Inspector General of Police. Ms. Nirvikar learned State counsel while admitting that the petitioner does require to be heard and cannot be left remediless submits that in the present case the appropriate forum would be the Zonal Inspector General of Police and thus the appeal filed by the petitioner before the said authority would require to be disposed of in accordance with law.

6. Having heard learned counsel for the parties and taking note of the amendment which has been produced by Ms. Nirvikar learned Government Advocate, incorporating the amendments to the Bihar Police Manual, the order passed by the Director General of Police dismissing the appeal filed by the petitioner by treating it to be a memorial together with the order passed by the Zonal Inspector General of Police, Darbhanga Range in consigning the appeal filed by the petitioner in the light of the order passed by the Director General of Police, cannot be upheld and are accordingly set aside. As a result the appeal filed by the petitioner before the Zonal Inspector General of Police, Darbhanga Range stands revived to its file. However in so far as the appeal before the Director General of Police is concerned which has been treated as a memorial, in my opinion since the appeal before the Zonal Inspector General, stands revived hence it is rendered premature and is accordingly consigned. The Zonal Inspector General of Police would consider the appeal afresh and dispose of the same in accordance with law with opportunity of hearing to the petitioner. The petitioner shall appear before the Zonal Inspector General of Police, Darbhanga Range together with the copy of this order on 6.9.2016 at 11 A.M. when he shall proceed to dispose of the matter preferably within eight weeks from the date of receipt/production of a copy of this order.

7. The writ petition is allowed.

8. Let the notification so produced by Ms. Nivedita Nirvikar learned G.A. 7 be maintained on the record of the proceedings.