
(1999) 12 PAT CK 0077

Patna High Court

Case No: C.W.J.C. No. 2499 of 1999 (R)

Chandra Bhushan
Sinha

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: Dec. 21, 1999

Citation: (2000) 1 BLJR 686 : (2000) 1 PLJR 670

Hon'ble Judges: Radha Mohan Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Radha Mohan Prasad, J.

Prayer in the writ petition is to quash the notification dated 4-8-1999 issued by the Commissioner and Secretary, Commercial Taxes, Bihar, Patna (Respondent No. 2), contained in Annexure-10, by which the petitioner has been placed under suspension on the ground of his not protecting three books of Form 28-B and the irresponsible conduct shown in discharge of his duty. The said order is purported to have been passed in exercise of the power under Rule 49-A of the Civil Services (Classification, Control and Appeal) Rules.

2. In short, the relevant facts are that on 28-11-1990, an explanation was called for from the petitioner vide Annexure-1 with respect to shortage of three books of Form 28-B as found on physical verification. Petitioner submitted his explanation vide Annexure-2 denying the said charge and also seeking permission to lodge F.I.R with respect to it. Petitioner lodged Sanha on 30th November, 1990 with the Officer-in-Charge, Jharia Police Station, Jharia vide Annexure-3. Vide order dated 26-12-1990 (Annexure-4) petitioner's services was attached to the Divisional Office and pursuant to the said order, he joined in the Divisional Office. Vide Gazette notification dated 7-1-1991, contained in Annexure-6 all the said missing books were declared as cancelled. In this regard, an inquiry was also conducted on the Sanha lodged by this petitioner by the Sub-Inspector

S.N. Patel, who submitted report, copy of which was forwarded to Respondent No. 2 by Inspector of Police, Jharia on 21st April, 1991 vide Annexure-7. In the said report, it was found that there was shortage in supply of three books from Gaya Government Press as three books were missing from the middle of the bundle itself. However, on 11-11-1991, the petitioner was again called upon to submit his explanation with reference to letter No. 721/C dated 19-7-1991, a copy whereof was also sent to the petitioner vide Annexure-B, alleging therein that he did not discharge the required carefulness in receiving the forms from Gaya Press, which resulted in missing of three books. He was required to submit show cause as to why a disciplinary proceeding should not be started against him. It appears that thereafter the petitioner submitted his detailed reply on 18-2-1993 vide Annexure-9 and requested to exonerate him from the charge of dereliction of duty. It is stated that after filing of the said show cause neither the charge was framed nor any inquiry was conducted, rather the petitioner learnt that he was only warned and the said order was passed in the relevant file of the Respondent, yet the impugned order or suspension was issued after almost nine years of the alleged charge.

3. Learned Counsel for the petitioner assailed the validity of the order of suspension on the grounds that the same has been mechanically passed mala fide to deprive him of the due promotion without taking into consideration the police report. It was submitted that exercise of the power under Rule 49-A cannot be invoked in a routine manner, as has been adopted in the present case, where the said power has been exercised after almost nine years of the charge without any explanation for the same.

4. In this regard, he referred to the decision of the Supreme Court in the case of [State of Orissa Vs. Bimal Kumar Mohanty](#), and also to a decision of this Court in the case of *Rajiv Dutta Verma v. State of Bihar and Ors.* reported in 1998 (3) All PLR 393.

5. Despite service of notice long back on 23-8-1999 on the learned Advocate General for the Respondents, no counter-affidavit has been filed on their behalf. Learned Government Pleader No. II, however, submitted that Respondent No. 2 has acted quite within his jurisdiction to pass the order of suspension in exercise of the power under Rule 49-A on the charge of showing gross negligence and irresponsible conduct of the petitioner, which resulted in missing of three books of Form 28-B. However, in absence of counter-affidavit, he has not been able to show any valid justification for placing the petitioner under suspension after almost nine years of the alleged occurrence.

6. There cannot be any dispute that in exercise of power under Rule 49-A, a Government servant can be placed under suspension either in contemplation or on initiation of a departmental inquiry. But, the apex Court in the case of *State of Orissa v. Bimal Kumar Mohanty* (supra) has categorically held that normally, when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or

investigated and the nature of the evidence placed before the appointing authority and on application of the mind by the disciplinary authority. The appointing authority or disciplinary authority are required to consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid act. It was held that it would not be the administrative routine or an automatic order to suspend an employee. In the case of Rajiv Dutta Verma, a Bench of this Court quashed the order of suspension pending a criminal case on the ground that factum of pendency of the criminal case was within the knowledge of Respondent No, 2 but only after expiry of seven years, the order of suspension was passed.

7. In the instant case also, it is evident that the factum of pendency of the charge levelled against the petitioner was well within the knowledge of Respondent No. 2 in November 1990 itself, yet the order of suspension has been passed after almost nine years only on 4-8-1999. Moreover, on inquiry, it has been found that there was shortage in supply of three books from Gaya Government Press itself due to mistake and there is no allegation that the forms from the said books were ever misused by any one causing any loss to the Government revenue.

8. Under such circumstances, in my opinion, there cannot be any justification for sustaining the order of suspension passed after nine years of the alleged occurrence with respect to the charge in question. It is true that by now it is well settled that suspension is not a punishment, but is only one way to restrain the employee to discharge the duty from the office held by him, but in my opinion, it certainly adversely affects the dignity of a person in society with respect to which the power cannot be lightly exercised.

9. The writ application is, thus, allowed and the impugned order of suspension is accordingly quashed. In the facts and circumstances, there shall be no order as to costs.