
Shiva Dutta Ram Vs The State of Bihar and Others

CWJC No. 915 of 2005

Court: Patna High Court

Date of Decision: Jan. 15, 2008

Acts Referred:

Bihar Pension Rules, 1950 " Rule 39, 43B

Citation: (2008) 3 PLJR 40

Hon'ble Judges: Navin Sinha, J

Bench: Single Bench

Advocate: Ashutosh Ranjan Pandey, for the Appellant; Rajesh Kr. Singh for the State, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Navin Sinha, J.

Heard learned counsel for the petitioner and learned counsel for the State. The petitioner is aggrieved by the order of

punishment dated 15.7.2004 in pursuance of proceedings u/s 43B of the Bihar Pension Rules (hereinafter referred to as "the Rules" for short),

visiting him with the punishment of complete forfeiture of his pension under Rule 39 of the Rules.

2. The petitioner was posted as the In-charge Treasury Officer at the relevant time. The allegations relate to attempted passing of salary bills

contrary to the request of the Headmaster without intimation to him. Two more persons of the Treasury Department, one Mahadeo Ram and the

other Vijay Kumar Srivastava, were alleged to have acted in tandem with the petitioner. On 16.1.1997 memo of charges were issued to the latter

two. Mahadeo Ram came to this Court in C.W.J.C. No. 2438/97. While directing expeditious conclusion of the proceedings this Court directed

that if the proceedings were not concluded by 30.5.1998, then the chargesheet and the suspension order shall stand quashed from 5th of June,

1998. The proceedings remained inconclusive. Departmental orders dated 26.9.2001, at annexure-9 followed. The proceedings were deemed to

be quashed by a formal order by the respondents not only against the applicant Mahadeo Ram but also against the aforesaid Vijay Kumar

Srivastava who was not a writ petitioner, as noticed above.

3. The petitioner, in the meantime, superannuated on 31.1.1997. a show cause dated 14.10.1998 was issued to the petitioner initiating

proceedings under Rule 43B of the Rules.

4. Learned counsel for the petitioner submitted that no regular departmental proceeding or enquiry was held as contemplated by law. Except for

the memo of charges and the documents enclosed thereto, the enquiry officer had only the show cause of the petitioner. No evidence was laid

before the enquiry officer by the prosecution and no opportunity to cross-examine was given to the petitioner. On this basis the enquiry officer on

surmises and conjectures arrived at a finding of the petitioner having acted in conspiracy when the impugned order of punishment followed.

5. Learned counsel for the State urged that the evidence by way of affidavit of some of the witnesses for the prosecution was placed before the

authority who conducted the preliminary enquiry on which the memo of charge was based and which have been considered by the enquiry officer

when there has been no objection by the petitioner.

6. Withholding of pension, more particularly forfeiture of the entire pension is a very serious matter for a Government servant in the evening of his

life when he has no other source of income. In the case of Ram Dayal Rai Vs. Jharkhand State Electricity Board and Others, the Supreme Court

viewed with seriousness a 5 per cent reduction in pension as a grave and irreparable injury. The present is a case of forfeiture of the entire pension.

Quite naturally the action of the respondents shall stand to greater scrutiny.

7. The finding of the department against the petitioner is one of conspiracy. The respondents found it convenient taking shelter of the order of this

Court in C.W.J.C. No. 2438/97 to allow the proceedings to lapse against one of the coconspirators. No justifiable reason, whatsoever, has been

placed before this Court as to why it was so permitted and what steps, if any, were taken by the respondents to prevent the same. Nothing has

been urged before this Court as to why when the petitioner in C.W.J.C. No. 2438/ 97 was Mahadeo Ram only, suo motu the respondents chose

to extend the benefit of the order of the writ court to the coconspirator Vijay Kumar Srivastava who had not even sought shelter of the Court.

Once Mahadeo Ram and Vijay Kumar Srivastava have been exonerated, no coconspirators are left. The finding against the petitioner of having

acted in conspiracy automatically falls to the ground.

8. Additionally, this Court has had the benefit of specific pleadings on behalf of respondent Nos. 6 and 7 in their counter affidavit. It confirms the

recitals in the enquiry report that there has been no regular departmental proceeding, inasmuch as, no one appeared on behalf the presenting

authority, no witnesses were examined and that there had been no cross-examination of witnesses. The findings, as recited in the enquiry report

itself, on basis of the memo of charges and the show cause filed are based on surmises and conjectures. If prosecution-witnesses had deposed,

and the petitioner had not demanded their cross-examination, or even if some of the witnesses had deposed and the petitioner had made no

request for cross-examination of certain others, the matter would have been entirely different. When there has been no regular departmental

proceeding, whatsoever, in law, the question of any objections not having been raised on behalf of the petitioner to suggest that he has not been

prejudiced is of no avail to the respondents. The question of prejudice to the petitioner arises only when there has otherwise been a regular

departmental proceeding in accordance with procedures.

9. Normally, in a case like the present, of irregular departmental proceedings, the matter should have been remanded back to the authorities to

proceed afresh from the stage of irregularity.

10. In the facts and circumstances of the present case, vis a vis, the action of the respondents with regard to the coconspirators Mahadeo Ram and

Vijay Kumar Srivastava, this Court called upon the respondents as to why orders for remand should not be passed presently. Learned Counsel for

the respondents, finding himself defenseless, only urged that it was official delay which prevailed to the advantage of the co-conspirators Mahadeo

Ram and Vijay Kumar Srivastava. The explanation leaves this Court far from satisfied.

11. In the result, the impugned order dated 15.7.2004, communicated to the petitioner on 2.8.2004, at Annexure-13, is hereby quashed. The writ

application stands allowed.