(2006) 08 PAT CK 0122

Patna High Court

Case No: LPA No. 803 of 2005

The State of Bihar and Others		APPELLANT
	Vs	
Ram Sarowar Prasad Singh		RESPONDENT

Date of Decision: Aug. 31, 2006

Acts Referred:

- Constitution of India, 1950 - Article 311, 311(2)

Citation: (2007) 1 PLJR 42

Hon'ble Judges: J.N. Bhatt, C.J; Shiva Kirti Singh, J

Bench: Division Bench

Advocate: S.S. Mishra, for the Appellant; U.P. Chainpuri, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Upon consideration of the facts and circumstances and the ground taken in the application for condonation of delay, we are satisfied that there was sufficient cause for delay in filing this Letters Patent Appeal. Hence, the delay is condoned and the delay condonation application is allowed. No order as to costs. By this Letters Patent Appeal, by invocation of the provisions of Clause 10 of the Letters Patent, the challenge is against the judgment and order dated 3.2.2005 recorded by learned Single Judge in CWJC No. 10606 of 1999, whereby, the impugned order of dismissal from service against the respondent original writ petitioner came to be quashed on the ground that constitutional safeguard of departmental enquiry was not conducted.

2. We have heard the learned counsel for the Government-appellant, as well as, for the respondent. We have also examined relevant proposition of law, as well as, factual profile and also the text and tenor of the impugned judgment of the learned Single Judge.

3. The order of dismissal from service against the respondent-original writ petitioner which came to be recorded by the disciplinary authority only on the ground that the employee, a Clerk, was found guilty and was convicted by the competent criminal court for a serious offence, was challenged before the learned Single Judge.

4. Upon consideration of facts and circumstances, the Writ Court reached to the conclusion that the impugned order of dismissal from service recorded by the respondent authority against the original writ petitioner is illegal and bad in law as departmental proceeding required under Article 311 of the Constitution was not held.

5. We have threadbare considered the proposition of law relating to the provisions of Article 311, as well as, the service terms and conditions and the relevant rules. It is a settled proposition of law that generally a government employee or an employee in the public employment can be visited with major penalty like removal, dismissal and reduction in rank, provided charges are found proved by holding a departmental enquiry and affording opportunity of hearing. But the requirements are different in a case where such penalty is imposed on conviction by a competent criminal court.

6. Departmental enquiry forms proceedings in two parts, one is referable to the find of delinquency or guilt and upon find of such delinquency or guilt, the question would arise in the second phase as to what should be the quantum of punishment to be imposed upon a delinquent in a departmental domestic tribunal. So far as a person who has been convicted for an offence is concerned, there would not arise a question of reaching to a finding or conclusion with regard to the guilt as he has been finally found guilty for the offence committed, by the competent court. This may be a ground for imposition of major penalty but that is not all.

7. It must be mentioned here at this juncture that a disciplinary authority, by celebrated proposition of law is obliged to consider various aspects before imposing penalty. It may also be further clarified that according to settled proposition of law, an employee under public employment or for that purpose, a government servant is required to be given a fair treatment which would imply opportunity of hearing on the quantum of punishment to be imposed by the disciplinary authority. Mere conviction does not "ipso facto" lead to penalty without giving opportunity of hearing. There is a purpose and policy behind it.

8. What is the nature of the offence, whether it is technical, whether it is petty, whether it is serious and the extent of the contribution of such person in perpetration of offence and alike questions are required to be considered by the disciplinary authority before inflicting any penalty, particularly a major penalty. The requisite procedure for giving an opportunity of hearing to the delinquent before he is visited with penalty on the basis of conviction recorded by the competent criminal court is admittedly not done in the present case.

9. Let us, also, recall the observation in paragraph 127, from the decision of Hon''ble Apex Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, , which is profitably quoted herein.

127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in Challappan case. This, however, has to be done by it ex parte and by himself. Once the disciplinary authority reaches the conclusion that the government servant''s conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court''s power of judicial review subject to the court permitted it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in Shankar Dass vs. Union of India this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."

10. On giving opportunity on this aspect and considering various relevant material points and facets relating to commission of the crime, disciplinary authority will be able to reach to a conclusion as to what should be the nature and quantum of punishment to be imposed on the delinquent upon a conviction made by a

competent criminal court. Since this is not done in the present case, obviously, the delinquent shall have to be given an opportunity of hearing on the nature and quantum of punishment. Only so far as proportionality of sentence is concerned he has a right to be heard. It is not necessary to hold full fledged departmental enquiry even on this count. It will be open for the disciplinary authority to take appropriate warranted decision for imposition of penalty upon hearing the concerned employee and on considering the relevant facts and circumstances.

11. It is in this context and for the aforesaid reason that the impugned order of dismissal from service recorded by the appellant authority against the original writ petitioner shall stand quashed and set aside. In our opinion, the ground on which it has been quashed is not germane to the issue.

12. Now, the question would arise as to what should be the time limit, since the matter is old and it pertains to the service matter, within which the respondent authority should be directed to dispose of the matter. At the same time the question will arise though we have also found the imposition of dismissal order of the Government vulnerable on the ground other than reached by the learned Single Judge, whether on setting it aside a reinstatement should be directed or not. Keeping in mind the entire factual profile and peculiar facts and circumstances, we are of the opinion that there shall be no reinstatement though the impugned order of the Government is quashed. Thus, we are making it very clear that the original writ petitioner-respondent before us, is not required to be reinstated for the limited purpose of giving him opportunity of hearing on the nature and quantum of punishment to be imposed in the light of the relevant facts and circumstances. Reinstatement will be governed by final decision of the disciplinary authority to be taken afresh in accordance with law and the observations in this order. Obviously, such an exercise needs expeditious process. We, therefore, direct the disciplinary authority to expeditiously conclude the proceedings as directed hereinabove but not later than four months from today. We, accordingly, allow the appeal by modifying the order impugned in this appeal on the ground stated in this order and direct the disciplinary authority to conclude the proceeding afresh as stated hereinabove. There shall be no order as to costs.