
Sudheshwar Nath Vs The State of Bihar and Others

C.W.J.C. No. 4248 of 1990

Court: Patna High Court

Date of Decision: Dec. 2, 1999

Acts Referred:

Income Tax Act, 1961 " Section 148, 149#Wealth Tax Act, 1957 " Section 14, 17, 17(1), 18

Citation: (1999) 3 PLJR 49

Hon'ble Judges: S.N. Jha, J

Bench: Single Bench

Advocate: Navin Sinha, for the Appellant; Jawahar Dhari Singh and Mrs. Meena Sing for State, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Jha, J.

Rule 43(b) of the Bihar Pension Rules provides for withholdment or withdrawal of pension or recovery from the pension of a

Government servant the amount of pecuniary loss suffered by the Government if the pensioner is found to be guilty of gross misconduct or to have

caused pecuniary loss to the Government by misconduct or negligence during the service period, in a departmental or judicial proceeding. Such

departmental or judicial proceeding if not pending while the pensioner was on duty before retirement, may be instituted but subject to certain

limitations. As regards the departmental proceeding with which we are concerned in this case, the rule lays down that it can be initiated with the

sanction of the State Government with respect to an event which had taken place not more than four years before the institution of such

proceeding. The explanation appended to the rule lays down that the departmental proceeding will be deemed to be instituted when the charges

framed against the pensioner are issued to him. The point for consideration in this writ petition is whether the memo of charges must also be served

within the period of four years.

2. The facts of the case, which are short and not in dispute, are as follows. The petitioner joined the Government service as an Assistant Engineer

in the then Public Works Department (now Road Construction Department) on 2.2.51 and after serving in different capacities superannuated as

Chief Engineer, North Bihar Wing, Darbhanga, on 31.3.86. No departmental proceeding or criminal case i.e., judicial proceeding within the

meaning of the said rule, was pending against him on the date of superannuation. On 9.4.90 he received a copy of resolution of the State

Government contained in memo no.1544(S) dated 31.3.90 of the Road Construction Department along with memo of charges, initiating

departmental proceeding against him for having made illegal appointments/promotions of 38 persons on extraneous consideration to monetary gain

or giving undue benefit to the relatives in violation of the Government orders contained in circular nos. 16440 and 16441 dated 3.12.80 and 7639

dated 11.6.86. Prior to that he had been asked to submit explanation on 16.5.87 which he did on 31.7.87. The petitioner has given an explanation

as to the circumstances in which the impugned appointments/promotions were made, with which we are not concerned in this case, The contention

of the petitioner is that initiation of the departmental proceeding on 9.4.90 i.e. after the expiry of period of four years is illegal and on that ground

his pension cannot be withheld or reduced.

3. The substance of Rule 43(b) relevant for the purpose of this case has ready been mentioned about but as the controversy involves the

interpretation of the relevant part of the rule, it may be appropriate to quote the whole of the rule so that the context in which that particular

provision appears may become clear.

43. (a) (b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether

permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to

Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct, or to have caused pecuniary

loss to Government by misconduct or negligence, during his service including service rendered on reemployment after retirement Provided that-

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure

applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceeding if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have

been instituted in accordance with sub-clause (ii) of clause (a); and (c) the Bihar Public Servant Commission, shall be consulted before final orders

are passed.

Explanation.-For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the

Government servant has been under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted (i) in the case of criminal proceedings, on the date on which a complaint is made,

or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be application is made to a civil court.

4. Shri Navin Sinha, learned counsel for the petitioner, contended that pension of a Government servant can be withheld or amount of loss suffered

by the Government recovered therefrom only if he found to be guilty of grave misconduct or to have caused pecuniary loss to the Government in a

departmental or judicial proceeding, and where such proceedings was not pending on the date of retirement it cannot be started after four years from

the date of event which is subject matter of the proposed proceeding. The expiry of the period of four years, account counsel, has to be reckoned

with reference to the date of service of the memo of charge which should be treated as the date of initiation of the proceeding, and not the date of

its issue. It was submitted that if the period is reckoned from the date of issue it will give the authorities a leverage making it possible for them to

issue the charges even after the expiry of the period ante-dating it. In the present case the notice was issued on the very last day of the expiry of

four years period i.e., 31.3.90. According to the counsel, the term "issued" should be construed as "served" and since the memo was admittedly

served on the petitioner on 9.4.90 i.e. after expiry of the period, the proposed proceeding must be struck down as being impermissible under the

rule. In support of the contentions counsel placed reliance on Commissioner of Wealth Tax, U.P. and Another Vs. Kundan Lal Behari Lal ; State

of U.P. and Another Vs. Shri Krishna Pandey ; and Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan

Vajpayee, .

5. Shri Jawahar Dhari Singh, learned Government Pleader, appearing for the respondents, on the other hand, submitted that where the term of the

statute is clear and unambiguous it is not necessary for the court to make an exercise in order to gather the intention of the framers of the rule. The

rule being clear that the proceeding will be deemed to be instituted when the charge is issued to the pensioner it would not be proper for the Court

to read the word ""issued"" as served. He pointed out that an unscrupulous pensioner may by taking recourse to dubious means to avoid service of

charge-sheet issued well within the period of limitation and thereby nullify the decision to initiate the proceeding, which will frustrate the very object

of the rule and, therefore, such an interpretation cannot be accepted. He relied on Delhi Development Authority Vs. H.C. Khurana, ; and Banarasi

Devi Vs. Income Tax Officer, Calcutta, .

6. It is well settled that the same word may have different meanings in different statutes, and the meaning assigned to it in one statute may not be

applied for interpreting the same word in the context of another statute. The meaning of the term "issued" in the context of the Wealth Tax Act, as

in the case of Kundan Lal Behari Lal (supra) therefore, may not be the real meaning of the same word in the context of the Bihar Pension Rules.

While considering similar argument advanced on behalf of the assessee in the context of section 149 of the Income Tax Act in Commissioner of

income tax vs. Sheo Kumari Debi, 1986 PLJR 743, a Full Bench of this Court distinguished the decision of the Supreme Court in Kundan Lal

Behari Lal's case, describing it as "ex parte short order", in these words (page 750 of the report);

Assuming entirely for argument's sake, in the first instance, that the said order is a judgment, it may be pointedly noticed that this was rendered

basically u/s 17 of the Wealth-tax Act, 1957. Now, there is no manner of doubt that from its very enforcement clause (b) of sub-section (1) of

section 17, in express term, required the service of a notice within the prescribed period of on the assessee. Clearly enough, in the said section

both the issue of the notice and its service by express mandate, have to be within the prescribed time of 4 years or 8 years as the case may be.

Section 18 of the Wealth-tax Act and, in particular, sub-section (2A) thereof (which stands omitted with effect from the 1st of April, 1976) is

plainly subsidiary to section 17. Equally it deserves notice that sub-section (2) of section 14 of the Wealth-tax Act which has been referred to in

clause (b) of section 17(1) required the service of a notice upon the person and not the mere issuance of such a notice.

7. In Chamber's Twentieth Century Dictionary the relevant meanings given to the word "issued" are act of sending out, to put forth, to put into

circulation, to publish, to give out for use. The meanings of the word "serve", on the other hand, have been given as to deliver or present formally,

give effect to. In the New Illustrated Dictionary the relevant meanings attributed to the word "issue" are to come out, be published, send forth,

publish, put into circulation; while relevant meanings given to the word "serve" are to supply a person with, make legal delivery of (writ etc.),

deliver writ etc. to a person. It would, thus, appear that the words "issue" and "serve" are distinct and separate. The actual service of notice

ordinarily is not a necessary concomitant of its issuance. Merely because the statute implies that an order issued should also be served on the

person, for whom it is meant, does not necessarily mean that the two words should be read as synonyms or inter-changeable. No doubt, in

peculiar situations, the extended meaning may have to be given to serve the object of issuance of notice as was situation in the case of

Commissioner of Wealth-tax vs. Kundan Lal Behari Lal (supra) or even Banarsi Devi vs. income tax-Officer (supra). It has, therefore, to be

considered as to what is the correct intended meaning of the term "issue" in the explanation to Rule 43(b).

8. In Delhi Development Authority vs. H.C. Khurana (supra) the promotion of the respondent was withheld applying the "sealed cover procedure"

on the ground that disciplinary proceeding had been initiated. The chargesheet in that case had been framed on 11.7.90, and issued and dispatched

on 13.7.90. The chargesheet however, could not be served as the respondent had proceeded months' leave. It was ultimately served on 25.1.91.

In the meantime, the Departmental Promotion Committee had met on 28.11.90 and in view of the decision to initiate the proceeding following the

sealed cover procedure passed over the case. It was argued on behalf of the respondent that the office memorandum dated 12.1.88 required

actual service and not mere issuance of chargesheet provided in the subsequent office memorandum dated 14.9.92 the service of the chargesheets

took place later on 25.1.91, the Departmental Promotion Committee should not have adopted the sealed cover procedure on 28.11.90. Rejecting

the contention the Supreme Court observed that the decision to initiate disciplinary proceeding against respondent had already been taken and

chargesheet had also been issued prior to 28.11.90 when the DPC adopted the sealed cover procedure merely because the service of the

chargesheet was effected after that date, on account of his absence, the adoption sealed cover procedure cannot be said to be illegal. It would

be useful to quote the following passage which, though appearing as platinum at page 197 of the report, culls out the ratio of the decision:-

The meaning of the word "issued" has to be gathered from the context in which it is used. The decision to initiate disciplinary proceeding cannot be

subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings.

The service of the on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that

decision. The delay, if any, in service of the charge-sheet to the government servant, after it has been framed and dispatched, does not have the

effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him,

by service of the charge-sheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings. The contrary

view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get

promotion in spite of that decision.

9. In Commissioner of income tax vs. Sheo Kumari Devi (supra) this Court pointed out that hall-mark of the limitation provision is that the same

must have a clear-cut and fixed termini at both ends. Not only the date on which it commences but also the date on which it comes to an end

should be definite. Any interpretation of the term which renders the commutation of the limitation at either end uncertain would not be proper. It

would be useful to quote the observations occurring at page 752-753 of the report, as under:-

It has been rightly said that a limitation provision would lose its effect unless it has a terminus a quo and a terminus ad quem. How, admittedly

section 149 fixes the terminus a quo from the end of the relevant assessment year, i.e. on the 31 March of said year. On the other hand, the

terminus ad quem under clauses (a) and (b) is fixed at 4 year. 8 years and 12 years, from the fixed date on 31st March, of the relevant assessment

year. It is within these precise parameters that a notice u/s 148 is mandated to be issued. If the notice is issued beyond these inflexible polestars,

the same would transgress the limitation provision of section 149.

However, if the argument canvassed on behalf of respondent assessee is to be accepted, it leads to a grave fallacy by making the terminus ad

quem wholly nebulous and utterly uncertain.

Considering the import of the term "issue" in the context of section 148 of the income tax Act the Court observed that it may be problematic to

serve notice upon the manipulating tax evading assessee for reopening his assessment if the date of service of notice is taken to be the reckoning

date and. therefore, if the date of commencement of limitation has been fixed as the end of the relevant assessment year i.e. 31st March of the

year, the other terminus must equally be fixed with regard to the date of the issuance of the notice which is precise and predicable. In this

connection the Court observed, "Therefore, to suggest that the terminus ad quem of section 149 would not be the date of issuance of the notice but

its valid service on a recalcitrant assessee would in a way, be violating the sounder norms of construction for a precise limitation statute." This

principle, in my opinion, squarely covers the point at issue.

10. The decision in State of U.P. vs. Shri Krishna Pandey (supra) was rendered in the context of Regulation 351A of the Civil Services

Regulations applicable to the government servant in the State of U.P. Though the Regulation contains provisions similar to those of Rule 43(b) of

the Bihar Pension Rules but there is nothing said therein which can be of any help to the petitioner. In that case the officer concerned retired on

31.3.87 but the proceeding was initiated only on 21.4.91 i.e. after more than four years. The Court held that as the event of misconduct, which

may have resulted in loss to the Government or embezzlement that led to the institution of the proceeding, had taken place more than four years

before the date of institution of the proceeding, the State had disabled itself by its omission to take appropriate action against the respondent.

There is no dispute that after expiry of period of four years from the date of event no proceeding under Rule 43(b) can be initiated. The case is

thus clearly distinguishable on facts and also has no bearing on the issue involved in the case.

11. The decision in the Managing Director, U.P. Warehousing Corporation vs. Vijay Narain Vajpayee (supra) is also of no avail to the petitioner

In that case an employee of the U.P. State Warehousing Corporation had been dismissed from service on charges in a departmental proceeding.

The dismissal was challenged on the ground of violation of rules of natural justice and one of the submissions was that the respondent was not

allowed to cross-examine certain persons who were examined in absence of the respondents. The Inquiry officer had relied on reports of some

persons and statements, of some other persons who were not examined by him or in the presence of the delinquent. In this connection, upholding

the challenge the Court observed that regular departmental inquiry takes place only after chargesheet is drawn up and served upon the delinquent

and his explanation is obtained. As no such inquiry was held and the order of dismissal had been passed summarily after perusing the respondent's

explanation and on the basis of the reports and statements of persons examined earlier behind his back the order of dismissal was violative of rules

of natural justice. The decision, it would, thus, appear reiterated the well known principles of disciplinary proceeding and has no relevance to the

point involved in the present case.

12. In view of the above discussions I have no hesitation in holding that expiry of period of four years, starting from the date of event, has to be

reckoned with reference to the date of "issue" of the memo of charges and it is not necessary that the memo should also be served within that

period itself.

13. From the details of the appointments/promotions, which are 13. From the terms of the impugned departmental proceeding, it appears that as many

as 38 persons were allegedly either appointed or promoted on differed between 1.8.85 and 31.3.86 Some of the impugned

appointments/promotions made on 31.3.86, which coincides with the date of superannuation. The memo of charge having undisputedly been

issued on 31.3.90, the impugned proceeding must be held to be within the period of limitation.

14. In the result, I do not find any merit in this writ petition, which is accordingly, dismissed, but without any order as to costs.