

Umesh Das Vs. the State of Bihar and Others

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Court : Patna

Decided On : Feb-21-2014

Judge : Jayanandan Singh

Appeal No. : Civil Writ Jurisdiction Case No. 3944 of 1998

Appellant : Umesh Das

Respondent : The State of Bihar and Others

Judgement :

In this writ application petitioner has challenged the order of punishment dated 28.02.1996 passed by the Collector, as contained in Annexure-12, by which the services of the petitioner have been dispensed with on conclusion of a departmental enquiry and has also challenged the order of the Appellate Authority dated 04.03.1998, as contained in Annexure-15, dismissing his appeal.

The short facts required to be noticed for the purpose of disposal of this case are that the petitioner at the relevant time was working as Clerk in the district Nazarat. In the inspection, some amount was found defalcated and he was put under suspension by order dated 4.9.1991 and was directed to deposit defalcated amount which he failed to do. Hence, some criminal and civil proceedings were initiated against him in court of law. Besides a departmental proceeding was also initiated against him. In the proceeding, charges were framed and served on the petitioner. It is his case that he kept on writing the authorities to supply him

documents and papers so that he may be able to explain his conduct. However, the same were not supplied to him, which deprived him from opportunity of filing of proper show cause. The proceeding was finally concluded and the enquiry report was submitted on 16.2.1996, vide Annexure-A with the supplementary counter affidavit and the order of the dismissal was passed on 28.2.1996, vide Annexure-12.

Learned counsel for the petitioner submits that throughout enquiry, the relevant documents, registers and ledgers of the Nazarat were never produced before the enquiry officer. He refers to a document as page 18 of the supplementary counter affidavit, filed on behalf of the respondents, which is a letter of the Treasury Officer, who was the Conducting Officer also, complaining to the Collector that, in spite of his efforts, the necessary documents and records were not being made available to him to enable him to proceed with the enquiry and conclude the same. He submits that this was the State of affairs as on 6.2.1996. Still the Conducting Officer submitted his report on 16.2.1996 only ten days after, upon which, the order of termination was passed by the Collector on 28.2.1996. He submits that the petitioners schedule date of superannuation was 29.2.1996, the year 1996 being a leap year. Since he was at the verge of retirement, the respondents, in hot haste, concluded the enquiry and issued the orders of termination, without giving opportunity to him to look to materials, which became available to the Conducting Officer during the course of the enquiry and without issue of 2nd show cause notice also to him. He submits that this stand was specifically taken by the petitioner before the Appellate Authority, but the Appellate Authority, instead of considering this gross violation of principles of natural justice, concluded that since the petitioner had not produced evidence to contradict the charges, there was no merit in his appeal.

Learned SC-III appears. He submits that the charges were served on the petitioner and he had knowledge of the enquiry. Still he did not participate and cooperate. For this, he refers to a document available at page 14 of the supplementary counter affidavit to submit that the petitioner was offered to spare time to inspect the relevant documents and records in connection with the charges in the Nazarat and upon his appearance arrangement was to made for his inspection of the

documents and records which were seized by the police. Though petitioner received this letter, but he never cooperated and did not appear in the Nazarat to inspect the records. He submits that initially the petitioner had deposited Rs.4,000/- (four thousand) with the respondents towards defalcated amount which shows that he had admitted the allegation of defalcation. Hence, it should be treated as his admission and writ application should be dismissed.

Learned counsel for the petitioner submits that deposit of Rs.4,000/- cannot be treated as admission on the part of the petitioner since it may be only to avoid any harassment to him from a proceeding. He submits that the petitioner never accepted the charges and all through his stand was that there was mistake in accounting which could be clarified if he was given proper opportunity to explain the entries in the records. He submits that in any case the records on which the enquiry report is based were never made available to him and the enquiry report was not served on him with 2nd show cause notice.

Having heard learned counsels for the parties and having perused the records it appears from the document at page 14 of the supplementary counter affidavit that petitioner was offered in October, 1995 to inspect the records in the Nazarat. This letter was issued by the Deputy Collector, Nazarat addressed to the petitioner. However, if this letter is read with the letter of the Conducting Officer dated 6.2.1996 available at page 18 of the supplementary counter affidavit, it becomes obvious that the records which were available in the Nazarat were not made available to the Conducting Officer for being referred to in the enquiry. Learned counsel for the State after looking to the original records informs this Court that the records had become available to the Enquiry Officer on 16.2.1996. This clearly shows that, the day the records became available to him, he submitted his report. In the circumstances, admittedly, he never intimated the petitioner that the records had become available to him in the enquiry now which petitioner was at liberty to inspect and examine. Above all, this is also apparent that on 16.2.1996 the enquiry report was submitted and order of punishment was passed on 28.2.1996. There is no material available on record to suggest that in between this period any 2nd show cause notice was issued to the petitioner or enquiry report was made available to him.

The impugned order (Annexure-12) is apparently one line order and the Collector, only recording that the Conducting Officer had found the charges proved, dismissed the petitioner. There is no other statement in the order to show that in any manner the Collector had applied his mind to the facts of the case. In this background of the facts, the stand of the petitioner that, due to his ensuing retirement on 29.2.1996, in hot haste, the proceeding was concluded and the order of dismissal was passed, stands substantiated and established.

After going through the appellate order this Court finds that the petitioner had taken the stand specifically in his appeal that the 2nd show cause notice had not been served on him and the enquiry report had not been supplied to him and he had not been given opportunity to examine the records. Still the Appellate Authority has completely ignored the stand of the petitioner and, in his concluding paragraph, only with observation that petitioner had deliberately not examined the records and he has not produced any material in the appeal to contradict the charges, has dismissed the appeal. Thus, this Court finds that the order of the Collector terminating the services of the petitioner and the appellate order suffers from gross violation of principles of natural justice, besides being totally non-speaking order. The Appellate Authority also stands vitiated on account of non-consideration of the stand of the petitioner and on account of the Appellate Authority putting burden on the petitioner to prove his innocence.

As a result, this application is allowed. The impugned order of the Collector dated 28.2.1996, as contained in Annexure-12, and the order of the Appellate Authority dated 4.3.1998, as contained in Annexure-15, are quashed. As a result of the quashing of the said impugned orders the consequences as per law shall follow.

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