Ajay Kumar Pathak Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Feb-13-2007

Judge : Sudhir Kumar Katriar, J.

Acts : Constitution of India - Article 226

Appeal No. : Civil Writ Jurisdiction Case No. 6694 of 2000

Appellant : Ajay Kumar Pathak

Respondent : The State of Bihar and ors.

Advocate for Def. : Jawahar Prasad Karn, A.A.G.-IX

Advocate for Pet/Ap. : Baxi S.R.P. Sinha, Adv.

Disposition : Writ petition dismissed

Prior history : Sudhir Kumar Katriar, J. 1. This writ petition has been preferred with the following prayer: (i) A certiorari setting aside the office order No. 176, dated 23.1.1999, passed by the respondent Director as contained in Annexure-6, whereby and whereunder the petitioner has illegally been dismissed from service; (ii) A certiorari setting aside the order as contained in memo No. 696, dated 31.3.2000 issued by the respondent Commissioner -cum- Secretary, as contained in Annexure-7, whereby and where

Judgement :

Sudhir Kumar Katriar, J.

1. This writ petition has been preferred with the following prayer:

(i) A certiorari setting aside the office order No. 176, dated 23.1.1999, passed by the respondent Director as contained in Annexure-6, whereby and whereunder the petitioner has illegally been dismissed from service;

(ii) A certiorari setting aside the order as contained in memo No. 696, dated 31.3.2000 issued by the respondent Commissioner -cum- Secretary, as contained in Annexure-7, whereby and whereunder the appeal filed on behalf of the petitioner against the order of dismissal has illegally been rejected.

(iii) A mandamus commanding and directing the respondents to reinstate the petitioner in service and allow him to discharge his duties in the department without any hindrance.

2. According to the writ petition, the petitioner at the relevant point of time was a Class-III employee and acting Peshkar in the office of the Special Land Acquisition Office No. 3, Suwarnrekha Pariyojana, Mango, Jamshedpur. An enquiry proceeding was started against the petitioner and others for acts of omission and commission during the course of land acquisition proceedings and payment of compensation. Charge-sheet dated 21.10.1995 (Annexure-2) was served on the petitioner who had shown cause by his communication marked Annexure-3 to the writ petition. The Special Land Acquisition Officer-III of the project was the enquiry officer who submitted his report dated 19.12.1996 (Annexure-B). Second show-cause notice dated 12.5.1998 (Annexure-4) had been issued to the petitioner, and he had shown cause by his communication dated 23.5.1998 (Annexure-5), leading to the order of punishment dated 23.1.1999 (Annexure-6), whereby he was dismissed from service. The petitioner submitted his appeal which has been dismissed by the order dated 31.3.2000 (Annexure-7), passed by the learned Commissioner-cum-Secretary, Department of Water Resources, Government of Bihar. Hence this writ petition.

3. While assailing the validity of the impugned action, learned Counsel for the petitioner submits that the petitioner was neither served with copies of the documents nor was allowed inspection of the same. The list of documents sought to be supplied, or for inspection, is marked Annexure-8 to the writ petition, and the further applications in this connection are of 15.11.1995 (Annexure-9), and 18.5.1998 (Annexure-9/1). He further submits that copy of the enquiry-report was not supplied to him. He relies on the following reported judgments:

(i) : (1991)ILLJ29SC (Union of India and Ors. v. Mohd. Ramzan Khan).

(ii) : (1994)ILLJ162SC (Managing Director, ECIL, Hyderabad and Anr. v. B. Karunakar and Ors.).

3.1 He further submits that a writ petition at the instance of similarly circumstanced person, who was subjected to the same departmental proceeding, has been allowed by a learned Single Judge of this Court by order dated 5.8.2005, passed in C.W.J.C. No. 14094 of 2001 (Lakshmi Manjhi v. The State of Bihar and Ors.).

4. Learned Counsel for the respondents has supported the impugned action. He submits that the scope of interference with the departmental proceeding in writ jurisdiction is extremely narrow and well-known. The petitioner cannot be permitted to convert this into a court of appeal.

4.1 He next submits that no contemporaneous material has been brought on record to establish that copies of the documents were not supplied or were not allowed to be inspected. The employee must also establish relevance of documents. He relies on the judgment of this Court, reported in 2001 (3) P.L.J.R. 113 (Rahul v. The State of Bihar and Ors.). He next submits that non-supply of a copy of the enquiry report by Itself does not invalidate the departmental proceeding. He must establish prejudice. He relies on the judgment in the case of Managing Director, ECIL, Hyderabad v. B. Karunakar (Supra).

5. I have perused the materials on record and considered the submissions of learned Counsel for the parties. Learned Counsel for the petitioner has relied on three documents on record which are prima-facie contemporaneous in nature and

must be dealt with one by one. He has relied on the petitioner's undated application marked Annexure-8 to the writ petition. It appears to have been filed before the learned enquiry officer and is headed as follows:

dkxtkr dh lwphrjQ ls vHk; dqekj ikBd fuyafcr lgk;d

The heading is sufficient to discredit the petitioner's case. This is not an application for discovery of documents, but was the list of documents submitted by the petitioner in support of his case.

5.1 The next document on record is the application dated 15.11.1995 (Annexure-9) which in its entirety is quoted hereinbelow:

lfou; fuosnu ;g gS fd eq> ij yxk;s x;s vkjksi ds laca/k esa dguk gS fd eq>s lHkh dkxtkr ns[kus gsrw 15 fnu dk le; nsus dh d`ik dh tk;] rkfd mfpr tckc Jheku~ dks ns ldwWaA

vr% Jheku~ ls fuosnu gS fd eq>s 15 fnu dk vkSj le; fn;k tk,A

It is manifest that it was an application seeking two weeks' time to be utilised for inspection of documents before the petitioner had shown cause to the charge-sheet.

5.2 Learned Counsel for the petitioner has next relied on the undated application marked Annexure-9(i) (allegedly received in the respondents office on 18.5.1998), the entire text of which is reproduced hereinbelow for the facility of quick reference:

vkidk i=kad 449 fnukad 12-5-95 ds vkyksd esa eq>s dguk gS fd eq>s f}rh; dkj.k i`PNk ds laca/k esa tcko nsus dk vkns’k izkIr gqvk g SA i`PNk dk tcko gsrw vki ds i=kad&449 fnukad& 12-5-98 vkt 18-5-98 dks izkIr fd;k gwWaA bl laca/k esa tckc nsus gsrw 1-6-98 rd le; fn;k tk,A

vr% bl dk;Z gsrw eq>s ewy vfHkys[k ns[kus gsrq foŒ ewŒ vŒ ekŒ 3 ekuxks te’ksniqj tkuk gksxkA

It is manifest on a plain reading of the same that it was an application for extension of time to show cause with respect to the second show-cause notice.

6. This Issue was also raised before the learned appellate authority who has found that principles of natural justice were fully adhered to. Copies of documents were either supplied or were allowed to be Inspected. This is a finding of fact which binds this Court in writ jurisdiction. Learned Counsel for the respondents has rightly relied on the judgment of the Supreme Court in the case of State of West Bengal v. Atul Krishna Shaw and Anr. reported in : AIR 1990 SC2205 , and of this Court in the case of Ram Narayan Renu v. The State of Bihar and Ors. reported in 2006 (1) P.L.J.R. 300.

7. Learned Counsel for the respondents has rightly relied on the Division Bench judgment of this Court in Rahul v. The State of Bihar (supra), paragraph 11 of which is relevant in the present context and is set out hereinbelow for the facility of quick reference:

11. The law on this point is well-settled. Non-supply of document by itself does not vitiate the proceeding. It has to be first determined as to whether the documents required by the delinquent employee are relevant or not and, secondly, even if they are relevant whether non-supply thereof has prejudiced him or not. It is the duty of the person affected to show as to how the document is relevant in the enquiry being held against him and how the non-supply thereof has caused prejudice to his case. Once these things are pointed out by the affected person then the court has to give a finding as to whether the relevant documents were supplied or not and whether non-supply thereof has prejudiced the case. Reference in this connection may be made to the cases of State Bank of Patiala v. S.K. Sharma reported in : (1996)IILLJ296SC and the State of Tamil Nadu v. Thiru K.V. Perumal and Ors. reported in : (1996)IILLJ799SC .

8. The petitioner has not been able to set up even semblance of a case that copies of documents sought for were not supplied or allowed to be inspected, let alone the question of making any attempt at all to establish the relevance of documents either before the learned enquiry officer or the learned appellate authority or in the present proceedings. Even the list of documents was not placed before the

learned appellate authority or the present proceedings. No grievance was raised in the cause shown before the learned enquiry officer or, the learned disciplinary authority. It is clearly an after-thought, wholly unsupported by contemporaneous materials, is indeed frivolous, and fit to be rejected.

9. The petitioner has not been able to establish in this Court that the petitioner was not supplied with copies of the documents or, in lieu thereof, was not allowed inspection of the same. The documents relied on by learned Counsel for the petitioner to establish this part of his submission are wholly irrelevant. The petitioner's case falls far short of the requirements laid down in Rahul v. The State of Bihar (supra). Mere non-supply of documents does not by itself enure to the petitioner's benefit. He must establish, particularly in writ jurisdiction, that the documents required by the delinquent employee are relevant to establish his defence and, secondly, whether non-supply thereof has prejudiced him. The contention is rejected.

10. Learned Counsel for the petitioner has next contended that he has not been supplied with a copy of the enquiry report before the order of punishment was passed. The law in this behalf is now finally settled by the Constitution Bench judgment of the Supreme Court in the case of Managing Director, ECIL, Hyderabad v. B. Karunakar (supra), paragraph 31 of which is relevant in the present context and is set out hereinbelow for the facility of quick reference:

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order or punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short

cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any Internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment..

That will also be the correct position in law.

11. The second show-cause-notice dated 12.5.1998 (Annexure-4) had summarised the enquiry report. Secondly, the cause shown by the petitioner on 23.5.1998 (Annexure-5) in answer to Annexure-4, shows that the petitioner was already in possession of a enquiry report. Therefore, the petitioner's contention in substance is tantamount to saying that, even though he was in possession of a copy of the enquiry report by his own resources, he ought to have been supplied with a copy of the same by the learned disciplinary authority. It is piling unreason upon technicality.

12. I must also deal with the judgment of the Supreme Court in Union of India v. Mohd. Ramzan Khan (supra), on which learned Counsel for the petitioner has placed reliance. This Issue has been dealt with in Managing Director, ECIL, Hyderabad v. B. Karunakar (Supra), paragraph 19 of which is reproduced hereinbelow for the facility of quick reference:

19. In Mohd. Ramzan Khan case the question squarely fell for consideration before a Bench of three learned Judges of this Court, viz., that although on account of the Forty-second Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the enquiry officer's report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that

whenever the enquiry officer is other than the disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that ground. Unfortunately, the Court by mistake allowed all the appeals which were before it and thus set aside the disciplinary action in every case, by failing to notice that the actions in those cases were prior to the said decision. This anomaly was noticed at a later stage but before the final order could be reviewed and rectified, the present reference was already made, as stated above, by a Bench of three learned Judges. The anomaly has thus lent another dimension to the question to be resolved in the present case.

13. Learned Counsel for the petitioner has also placed reliance on the order dated 5.8.2005, passed in C.W.J.C. No. 14094 of 2001 (Lakshmi Manjhi v. The State of Bihar 4 Ors.). None of the contentions raised and discussed hereinabove were submitted for consideration of the learned Single Judge and is, therefore, not relevant for the purpose of disposal of the present writ petition.

14. It thus appears to me that the petitioner has not been able to make out even a prima-facie case before this Court that he was not supplied with copies of the documents or that he was not allowed inspection of the same during the course of the enquiry. The documents relied on by him in this connection in the present proceedings are wholly irrelevant to establish the contention. The petitioner has not even informed this Court of the documents which he had wanted from the learned enquiry officer, or he wanted inspection in lieu thereof and was not allowed, let alone the question of establishing the relevance of the same or the prejudice to the petitioner. The learned appellate authority as a forum of facts has found against the petitioner. Secondly, the petitioner was already in possession of the enquiry report, may be through his own resources, and summary of the same was conveyed to him by the second show-cause notice. The contentions are

rejected.

15. Learned Counsel for the respondents is right in his submission that the scope of interference in writ jurisdiction with a departmental proceeding is narrow and well-known. The petitioner cannot be permitted to convert it into a court of appeal. The Supreme Court has held in its judgment reported in : (1964)IILLJ150SC (State of Andhra Pradesh v. S. Sree Rama Rao) that the High Court is not constituted, in a proceeding under Article 226 of the Constitution, as a Court of appeal over the decision of the authorities holding departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.

15.1 The Supreme Court has held in its judgment reported in : 2000(67)ECC16 (The High Court of Judicature at Bombay v. Shashikant S. Patil and Anr.) that interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution, if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. The departmental authority is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

15.2 The Supreme Court has also held in its judgment reported in : (2005)ILLJ685SC (Principal Secretary, Govt. of A.P. and Anr. v. M. Adinarayana) that judicial review cannot extend to the examination of the correctness of the charges, as it is not an appeal but only a review of the manner in which the decision was arrived at.

16. In the result, I do not find any merit in this writ petition. It is accordingly dismissed. There shall, however, be no order as to costs.