

Chandra Narayan Singh Vs. the State of Bihar and ors.

Chandra Narayan Singh Vs. the State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/123587

Court : Patna

Decided On : Dec-18-2007

Judge : Mridula Mishra, J.

Appeal No. : CWJC No. 105 of 2006

Appellant : Chandra Narayan Singh

Respondent : The State of Bihar and ors.

Advocate for Def. : Sanjay Kumar, J.C to AAG 10

Advocate for Pet/Ap. : Rajeshwar Prasad and Arun Kumar Jha, Advs.

Disposition : Application allowed

Prior history : Mridula Mishra, J. 1. Heard learned Counsel for the petitioner and the State. 2. In this writ application, the petitioner has prayed for quashing the order dated 4.12.1999 (Annexure 3), passed by the District Superintendent of Education, Sahara (respondent. 6) whereby the petitioner has been awarded punishment of withholding of one increment with prospective effect in the departmental proceeding. Further prayer of the petitioner is for quashing the order dated 21.2.2004, passed by the Commissi

Judgement :

Mridula Mishra, J.

1. Heard learned Counsel for the petitioner and the State.

2. In this writ application, the petitioner has prayed for quashing the order dated 4.12.1999 (Annexure 3), passed by the District Superintendent of Education, Saharsa (respondent. 6) whereby the petitioner has been awarded punishment of withholding of one increment with prospective effect in the departmental proceeding. Further prayer of the petitioner is for quashing the order dated 21.2.2004, passed by the Commissioner, Koshi Division, Saharsa (respondent No. 3) in Service Appeal No. 16 of 2002 dismissing the appeal on technical ground of limitation without considering the merit of the appeal, as directed by this Court by order dated 4.7.2003 passed in CWJC No. 5739 of 2003.

3. It appears that for similar relief, the petitioner had earlier filed CWJC No. 5739 of 2003 with a prayer to quash the order of punishment of with holding of one increment and the order passed by the appellate authority, dismissing the appeal on the point of limitation. The writ application was allowed by quashing the order of the appellate authority and the matter was remitted back to the Divisional Commissioner with a direction to hear the appeal in accordance with law. In spite of that direction of this Court in the aforesaid writ application, the appellate authority, Divisional Commissioner has again dismissed the appeal on technical ground as well as on the ground of limitation.

4. The petitioner was posted as Assistant Teacher in Middle School, Sileth, under Sour Bazaar Police Station in the district of Saharsa. On 2.1.1997 the petitioner on account of ailment was absent from the school and for his absence he had applied for leave. On that very date, the school was inspected by the District Magistrate, Saharsa and finding upon that the petitioner was absent from duty an order of suspension was issued by the District Superintendent of Education, on the direction of the District Magistrate. A departmental proceeding was initiated by the District Superintendent of Education and charges were framed. The petitioner on receipt of charges submitted his show cause. The Inquiry Officer considered his show cause and also held spot inquiry and thereafter he submitted his inquiry report. Finding the petitioner innocent, the Enquiry Officer recommended for exoneration of the petitioner from the charges and also for vacating the order of

suspension.

5. The Disciplinary authority, without issuing any notice to show cause and without assigning any reason, differed with the opinion of the inquiry officer and passed the final order, dated 4.12.1999, by which the Disciplinary authority revoked the suspension but awarded punishment withholding one increment with prospective effect.

6. The petitioner when came to know about the said order, he filed Service Appeal No. 16 of 2002 which was dismissed on the ground of limitation. The petitioner challenged the appellate order and order of punishment by filing writ applications. This Court allowed the writ application and remitted the matter back to the Divisional Commissioner for re-hearing the appeal and pass order in accordance with law. The Service appeal of the petitioner has again been dismissed by the Divisional Commissioner on same technical ground of limitation.

7. Learned Counsel for the State is not in a position to defend the order passed by the Commissioner of the Division.

8. On perusal of the impugned order passed by the Commissioner, I find that the Commissioner has wrongly held that on remand, he cannot reconsider the same appeal as it will amount to reviewing the earlier order. The order passed by the Commissioner in Service Appeal No. 16 of 2002, dated 21.2.2004, thus is completely in violation of the direction of this Court as such, it is without jurisdiction and is fit to be quashed. So far as the order passed by the Disciplinary authority is concerned, it has also been passed without considering the inquiry report and without assigning any reason for differing with the opinion of the inquiry officer. It has rightly been pointed out by the learned Counsel for the petitioner that it is in violation of the mandatory provisions for holding departmental proceeding. Earlier, when the matter was remanded for reconsideration, there was specific direction to the appellate authority to reconsider the appeal on merit but again it has been dismissed on technical grounds.

9. In the facts and circumstances of the case, I do not feel inclined to again remit back the matter for reconsideration as the departmental inquiry initiated in the year

1998 has not come to an end even after nine years and still the petitioner is not free from the agony of the departmental proceeding. He was absent for one day after filing an application for leave and he has been penalized for one day's absence for such a long time.

10. Accordingly, the order passed by the disciplinary authority, awarding punishment of withholding one increment, dated 4.12.1999 (Annexure 3) is quashed. The order passed by the appellate authority, dated 21.2.2004 is also quashed. This application is thus allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com