

Arun Kumar and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-02-2007

Judge : Navin Sinha, J.

Appellant : Arun Kumar and anr.

Respondent : The State of Bihar and ors.

Disposition : Application allowed

Prior history : Navin Sinha, J. 1. Heard learned Counsel for the petitioners and learned Counsel for the State. This writ application raises a short question of law with regard to the jurisdiction of this Court to interfere with orders passed in a departmental proceedings and the provisions of Rule 97(3) of the Bihar Service Code. This order shall, therefore, take note of the facts only to the extent necessary for the purpose. 2. The petitioners were proceeded departmentally. The Inquiry Officer submitted his

Judgement :

Navin Sinha, J.

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

This writ application raises a short question of law with regard to the jurisdiction of this Court to interfere with orders passed in a departmental proceedings and the

provisions of Rule 97(3) of the Bihar Service Code. This order shall, therefore, take note of the facts only to the extent necessary for the purpose.

2. The petitioners were proceeded departmentally. The Inquiry Officer submitted his reports for the two enquiries separately dated 28.4.2000 and 1.5.2000. In pursuance of the submission of the enquiry report, the impugned order of punishment was passed on 19.6.2000 imposing the penalty of stoppage of increments for two years. The suspension was revoked but the period of suspension was not to be treated as period on duty which came to be reviewed when it was decided to be treated as spent on duty but they were not to be paid the salary for the period of suspension.

3. Learned Counsel for the petitioner submitted that the Inquiry Officer did not arrive at a determination or finding of any guilt of the petitioners. On the contrary the Inquiry Officer has noticed that the materials called for by him from the Department to determine the culpability of the petitioners were not placed before him. The Inquiry Officer, therefore, without arriving at a finding of guilt only observed that the petitioners should be more vigilant in performance of their duties. In absence of a finding of guilt, the impugned order of punishment was not sustainable. No separate notice has been given to the petitioners in terms of Rule 97(3) of the Bihar Service Code before denial of wages for the period of suspension. Reliance was placed upon a Division Bench judgment of this Court reported in 2006(4) PLJR 514 (Dinesh Prasad v. The State of Bihar and Ors.)

4. Learned Counsel for the State submits that after the Inquiry Officer submitted his report, the petitioner was given an opportunity to show cause for the proposed punishment where after the order of punishment came to be passed. The judgment relied upon by the petitioner was different on facts inasmuch as the order of punishment came to be passed without giving them a copy of the enquiry report, and opportunity of show cause.

5. This Court on consideration of the submission of the parties comes to the conclusion that the Inquiry Officer did not arrive at a finding of guilt of the petitioner. A finding of guilt is necessary before an order of punishment can be passed. The disciplinary authority, however, could differ with the same and after

an opportunity of show cause could arrive at a different conclusion. To that extent, this Court finds no infirmity in the order of punishment of stoppage of increment for two years. To that extent the writ application is dismissed.

6. This Court, however, upholds the submission on behalf of the petitioners that the denial of wages to them without proper notice and proceedings under Rule 97(3) of the Bihar Service Code for the period of suspension is contrary to law and is not sustainable. In the case of Dinesh Prasad v. The State of Bihar and Ors (supra) relied upon by the petitioner, it has been specifically held in paragraph 9 as follows:

9. Apart from these questions, so far the main question for which this matter has been referred, is concerned, it appears that for imposing the punishment No. (iii) that the petitioner shall not get anything for the period of suspension save and except the subsistence allowance, the disciplinary authority was required to give separate show cause notice to the delinquent in terms of Rule 97(3) of the Code. This part of the order, therefore, is not permissible in absence of any such notice to the delinquent employee.

7. It is not in controversy that the petitioners have not been given any such notice before the impugned order of punishment of denial of wages for the period of suspension was passed.

8. The writ application is, therefore, fit to be allowed to that extent alone.

In the result, the order of punishment insofar as it seeks to deny the petitioner wages for the period of suspension is set aside. The petitioner shall be entitled to full wages for the period of suspension. Let the same be paid to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this order. The writ application stands allowed to the extent indicated above.