

Basdeo Singh Vs. State of Bihar and ors.

Basdeo Singh Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/129479

Court : Patna

Decided On : Jan-09-2003

Judge : Narayan Roy, J.

Acts : Service Law

Appeal No. : C.W.J.C. No. 10841 of 1998

Appellant : Basdeo Singh

Respondent : State of Bihar and ors.

Advocate for Def. : JC to AAG 3

Advocate for Pet/Ap. : Ashok Kumar Deuby, Adv.

Disposition : Application allowed

Judgement :

Narayan Roy, J.

1. Heard Counsel for the parties.

2. The grievance of the petitioner is that though he is working as peon under the respondents, his salary has been stopped with effect from July 1997 even in absence of a departmental proceeding or an order of suspension.

3. Learned Counsel appearing on behalf of the petitioner was appointed as a peon under the respondents on 10-2-1966 and while he was functioning on the post of peon, he was made an accused in Dehri (Indrapuri) Police Station Case No. 101 of 1998, which would be evident from Annexure 13 of the writ application. However, subsequently, he was released on bail by the learned Chief Judicial Magistrate, Rohtas at Sasaram. It is further submitted that the petitioner even was not put under suspension either on account of his remand to Jail custody or on criminal charge nor he was put under suspension in the departmental proceeding. It is also submitted that by order as contained in Annexure-10, the authorities decided to initiate a departmental proceeding against the petitioner on 19-2-1998 and a direction was issued to conclude the departmental proceeding within one month, but till date neither the proceeding has been initiated nor charges have been served upon the petitioner, still then his salary has been stopped.

4. A counter affidavit has been filed on behalf of Respondent Nos. 1 to 4. In the counter affidavit, it is only stated that the petitioner was facing criminal charge, but nowhere it is stated as to whether for the criminal charge, the petitioner was put under suspension as required under Rule 100 of the Bihar Service Code or he was put under deemed suspension for the period he remained in custody, as required under Rule 99 of the Bihar Service Code, which reads as under:--

'(99) A servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence grant that may be granted in accordance with principles laid down in Rule 96) for such periods, until the termination of the proceedings taken against him or until he is released from detention and allowed to rejoin his duties as the case may be. An adjustment of his allowances for such period, therefore, be made according to the circumstances of the case, the full amount being only in the event of the Government servant being acquitted of blame or (if the proceeding taken against him, were for his arrest for debt) of its being proved that the Government servant's liability arose from circumstances beyond his control or detention, being held by

any competent authority to be unjustified.'

5. There is no mention in the counter affidavit as to what happened to the direction issued by the authorities to initiate the departmental proceeding on 19-2-1998 and no positive stand has been taken in the counter affidavit to defend that action of the authorities in stopping the salary of the petitioner.

6. Learned Counsel appearing on behalf of the petitioner lastly submitted that the petitioner will superannuate sometime in 2004 and in the facts and circumstances of the case, he must be deemed to have served under the respondents throughout.

7. From the pleadings of the parties, it appears that the petitioner was facing a criminal charge, but was never put under suspension nor there was any headway in the departmental proceeding, which was directed to be initiated. It is also not known to this Court as to whether, in fact, the departmental proceeding, as directed vide order, as contained in Annexure-10, was ever initiated. The question, therefore, arises as to whether the authorities were well within their jurisdiction to stop the salary of the petitioner. It is well known law that the delinquent even if is put under suspension, he gets subsistence allowance. But in the given case, the petitioner is neither under suspension nor any punishment has been imposed upon him, but at the same, his salary has been stopped. This question had fallen for consideration before this Court, firstly in the case of Ram Pati Mishra and Ors. v. State of Bihar and Ors., (2001 (3) Patna Law Journal Reports 462, and this Court held as follows:--

'(5) From the order, as contained in Annexure-9, per se it appears that pending inquiries, the authorities have directed not to take work and not to pay salary to the petitioners. In my opinion, the direction aforesaid is wholly unjustified. The authorities firstly .could have proceeded with the inquiry and in case, they would have been satisfied that such employees like the petitioners were not appointed in consonance with the provisions of Articles 14 and 16 of the Constitution of India, they could have issued necessary direction for removing them from service. The procedure adopted by the authorities, therefore, must be held to be wholly unwarranted in law. A large number of cases are everyday coming before this

Court against like directions.'

8. The correctness of the case of Ram Pati Mishra (supra), however, was doubted by a learned single Judge of this Court and the matter was referred to a Division Bench and the Division Bench of this Court in the case of Radha Kumari v. State of Bihar and Ors., (2002(3) BLJR 1743 : 2002 (3) PLJR 794) upheld the ratio laid down in the case of Ram Pati Mishra (supra) and held that the salary of an employee cannot be withheld in absence of suspension or departmental proceeding,

9. The ratio laid down by this Court in the cases of Ram Pati Mishra (supra) and Radha Kumari (supra) squarely covers this case.

10. In view of the legal propositions and the facts and circumstances of the case, it is held that the petitioner will be deemed to be in service throughout and he is entitled for his salary with effect from July, 1997 till date.

11. In the result, this application is allowed, the respondent authorities are directed to pay the due salary to the petitioner with effect from July, 1997 till date within a period of three months from today and the petitioner will be allowed to function till he attains the age of superannuation.

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