

Birendra Kumar Das Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-16-1993

Judge : G.C. Bharuka, J.

Appeal No. : Civil Writ Jurisdiction Case No. 7677 of 1989

Appellant : Birendra Kumar Das

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : Sri. Ashok Priyadarshi

Judgement :

G.C. Bharuka, J.

1. The present writ application has been filed by the petitioner for quashing the order dated 5-7-1989 (Annexure-1) issued by the respondent Chairman-cum-Managing Director, Bihar State Export Corporation, Biscoraaun Bhawan, Patna (in short' the Corporation' only) by which it has been communicated that in view of the decision taken by the Board of Directors, this petitioner is discharged from his service of the Corporation with immediate effect.

2. The relevant facts may be stated in short. The petitioner was appointed in service of the Corporation on 10-7-1985 and was posted as the Administrative cum-Information Officer which was subsequently re-designated as Personnel and

Administrative Officer. Subsequently by an order dated 6-8-1988, the petitioner was transferred on the post of Sales Manager in a Vihanka Show room of the Corporation at Patna. The petitioner objected to his said transfer by filing representation but the same was rejected. Then the petitioner challenged the order of transfer by filing a writ petition in this Court being C.W.J.C. No. 6656 of 1988 and 29-9-1988 a Bench of this Court issued notice against the respondents and on in the meantime stayed the operation of the transfer order in the following terms:

Until further orders, operation of the order as contained in Annexure-1 shall remain stayed if it has not taken effect BO far.

3. On the strength of the said order, the petitioner did not join the post of Sales Manager where he was transferred. As such by order dated 6-10-1988 (Annexure-12) a departmental proceeding was initiated against the petitioner pursuant to a decision of the Board of Directors and the petitioner was put under suspension. During the period of suspension the Head Quarter of the petitioner was fixed at Viharika show room and it was said that he will be entitled for subsistence allowance as per rules. Thereafter the petitioner was served with a charge-sheet, (Annexure-4). The charges were in the following terms:

In exigencies of public service, Sri B. K. Das, P. A. O. was transferred to Viharika, Showroom of the Corporation as its Sales Manager vide office order No. 2183, dated 6-8-1988 with immediate effect. Sri Das did not comply with the order and submitted a representation. The norms required that he should have joined duty immediately. Even then, his representation was considered and found unsatisfactory. This was conveyed to Sri Das with a directive to join duty vide Memo No. 2456 dated 29-8-1988. But he again failed to join his new assignment. He was again directed vide Memo No. 2666 dated 15-9-1988 to join duty there was no compliance report. Such arrogant behaviour on the part of employees, particularly in case of grade II officer is gross misconduct and clear case of dereliction of duty. By disobeying the orders of superior authority Shri Das showed utter disregard for public and Corporation's interest.

After due enquiry, ultimately the impugned order of discharge was passed. After having heard Sri Ashok Priyadarshi, learned Counsel for the petitioner who assails the impugned order on various grounds and Mr. Mukhopadhyaya, learned Counsel for the Corporation and other respondents, in my considered opinion, the finding as recorded is a finding of fact based on cogent materials and, therefore, it will not be permissible on the part of this Court to interfere with the said finding in its jurisdiction. Nothing could be placed on behalf of the petitioner which could justify any procedural error or the violation of the principles of natural justice in arriving at the said conclusions. Therefore, in my opinion, the petitioner should be taken to be guilty of misconduct.

4. Mr. Priyadarshi then submitted that even if the petitioner is found to be guilty of the charges, as above, still, this Court can interfere with the punishment as awarded because the punishment of discharge is too severe telling upon the very livelihood of the petitioner and cannot, in the facts and circumstances of the present case, said to be commensurate with the gravity of the charges. According to Mr. Priyadarshi, the misconduct at best is in relation to unauthorised absence from his duty on certain misconceived notion of law and. wrong legal advice. He has submitted that the view of the petitioner was also fortified since this Court also, prima facie, felt that the legality of the transfer order needs to be examined and only because this on 29-9-1988 notices were issued to the respondents and an interim order was passed. In support of his submission, he has relied upon various pronouncements of the apex court. In the case of Sardar Singh v. Union of India AIR 1992 SC 417, their Lordships have noticed with approval the following passage from their earlier decision in Bhagatram's case : (1983)11LLJ1SC :

It is equally true the penalty imposed must be commensurate with the gravity of the misconduct, a that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

It is not in dispute that the respondent Corporation is an instrumentality of the State and as such the constitutional mandate contained in Article 14 of the Constitution of India equally applies to the actions of the Corporation. Keeping in view the pronouncements of the apex Court and the facts and circumstances of

the present case. I have no hesitation in holding that the punishment of discharge as awarded is not commensurate to the gravity of the charge and the same being too severe, is fit to be annulled.

5. I accordingly quash the order as contained in Annexure 1 only in part relating to the quantum of punishment.

6. Mr. Priyadarshi referring to Para 6 of the judgment in Sardar Singh's case (supra), where the apex court has itself substituted the punishment by a lesser punishment to meet the ends of justice, submitted that a similar course be adopted by this Court also. But, in my opinion, this Court cannot do that, because whereas the Supreme Court under Article 142 of the Constitution of India has special jurisdiction to 'make such order as if necessary for doing complete justice in any cause or matter pending before it', the High Courts have not been conferred with any such jurisdiction as held in the case of *State of Punjab v. Surinder Kumar* : [1992]194ITR434(SC) . Quantification of punishment is essentially the function of the disciplinary authority and it cannot be entrenched upon by the High Court while reviewing the legality of an administrative action.

7. In the above view of the matter, I hereby direct that the petitioner be immediately reinstated in the service by the Corporation and so far as the question of awarding the punishment is concerned, it may be reconsidered keeping in view the materials on record and appropriate order awarding such punishment, other than that of discharge, passed being commensurate with the gravity of the charge.

This writ petition is, accordingly, allowed in part but without costs.