

Narendra Prasad Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-02-1998

Judge : R.A. Sharma and A.K. Prasad, JJ.

Appeal No. : C.W.J.C. No. 2712 of 1991 (R)

Appellant : Narendra Prasad

Respondent : The State of Bihar and ors.

Advocate for Pet/Ap. : Mr. Jawahar Prasad

Judgement :

A.K. Prasad, J.

1. By filing this writ petition, the petitioner has prayed for quashing the impugned orders of punishments imposed on him vide order dated 26.4.1990 by respondent No. 3 (Annexure 4) and which was modified by the appellate authority (respondent No. 2) vide Annexure 8, order dated 16.7.1991.

2. The relevant facts for disposal of the application may be stated as follows:

The petitioner was posted as Block Education Officer, Chas 2 at Dhanbad in 1975. He was put under suspension by respondent No. 3 vide order No. 751 dated 15.10.1986 (Annexure 1) on the allegations of corruption, bribery, and exploitation of teachers. A departmental proceeding was initiated against him. Memorandum in

respect of 10 charges was served on him. He filed written statement in the proceeding and contested it. The Inquiry Officer (respondent No. 4) on the basis of the materials on record, found that the charge of getting his own service book reconstructed/substituted without sanction of the competent authority and in violation of the rule alone was established and the other charges were either false or not substantiated. The petitioner had produced his reconstructed/substituted service book from his custody before the Inquiry Officer. The Inquiry Officer suggested that the petitioner may be warned for the charge proved. Respondent No. 3 on perusal of the inquiry report held that three charges were proved against the petitioner, namely, making unauthorized deputation of teachers, opening/reconstructing of service book in violation of the rules and his failure to join in the office of the District Education Officer after having over charge during suspension. He imposed the penalties on the petitioner regarding withholding of three increments with cumulative effect withholding of promotion for three years from the due date and severe censure. He further ordered that the petitioner will not be entitled to salary or allowance except the subsistence allowance and that the period of suspension was not to be counted for the purposes of pension and other retrial benefits.

3 Aggrieved by it, the petitioner preferred CWJC No. 1385 of 1990 (R) before this Court which was disposed of on 8.8.1990 with observation to avail the remedy of a appeal before approaching this Court (vide Annexure 7). Thereafter, the petitioner appealed against the impugned order (Annexure 4) before respondent No. 2. Respondent No. 2 considered the matter and by speaking order concurred with the findings of respondent No. 3 that the three charges, mentioned above, had been proved against the petitioner. But he modified the punishment awarded to the petitioner to the extent that the three increments are only to be withheld with cumulative effect and he affirmed that no payment other than subsistence allowance is to be made to the petitioner for the period under suspension. He further ordered that the period of suspension would be counted towards pension benefits of the petitioner (vide Annexure 8).

4. Mr. Jawahar Prasad, learned Counsel for the petitioner, raised the following contentions:

(i) The competent authority (respondent No. 3) did not assign any reason in the order dated 26.4.1990 (Annexure 4) for disagreeing with the findings of the Inquiry Officer on two other charges, namely, un-authorized deputation of teachers and not joining in the office of the District Education officer after suspension;

(ii) No Opportunity to show cause was given to the petitioner by the competent authority before making adverse order under Sub-rules (3) or (5) of Rule 97 of the Bihar Service Code (hereinafter to be referred to as 'the Code'), and the impugned order denying any payment except subsistence allowance to the petitioner for the period of suspension is against principles of natural justice.

Mr. A.K. Jha, J.C. to the learned Standing Counsel, appearing on behalf of the respondents, on the other hand, submitted that the petitioner participated in the departmental inquiry; that the appellate authority (respondent No. 2) by speaking order (Annexure 8) concurred with the findings of respondent No. 3 that three charges (which have already been described above) had been established on the basis of the inquiry record against the petitioner proceeded and an order under Sub-rule 3 or 5 of Rule 97 of the Code is consequential in nature and is not a punishment.

5. It is not the case where the Inquiry Officer had exonerated the petitioner of all the charges. It is true that respondent No. 3 did not assign any reason for disagreeing with the findings of the Inquiry Officer on the charges of wrong deputation of teachers and on failure to join at the H. Qrs. after handing over charge, during the period of suspension. But the fact remains that the appellate authority respondent No. 2 has concurred with the findings of respondent No. 3 that the three charges were proved by speaking order and after hearing the writ-petitioner. Thus, there is concurrent finding of both the authorities below that the three charges were proved against the petitioner. It is not open for this Court in exercise of the writ jurisdiction to go into the merits of the findings.

6. In the instant case, the appellate authority did not impose any major punishment by the impugned order (Annexure 8).

7. At this stage, the provisions contained in Rule 97 of the Code may be noticed, which is as under:

97. (1) when a Government servant who has been dismissed, removed, or suspended is reinstated, the authority competent to order the reinstatement shall consider and make specific order:

(a) regarding the pay and allowance to be paid to the Government servant for the period of his absence from duty, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in Sub-rule (1) is of opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was fully unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be.

(3) In other case, the Government servant shall be given such proportion of such pay and allowance as such competent authority may prescribe:

Provided that the payment of allowance under Clause (2) or Clause (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under Clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under Clause (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.

Under Sub-rule (3) of Rule 97 of the Code, an order directing that the Government servant concerned shall not be entitled to pay allowances, save and except the

subsistence allowance has to be passed by the competent authority in every case at the stage of the final conclusion of the department proceeding. An order passed in terms of Sub-rule (3) of Rule 97 of the Code is per se not in the nature of penalty within the meaning of the service rules, but nonetheless its affect is penal in nature, since it adversely affects the person concerned. In the light of the principles of natural justice and fair play, it was essential for the concerned authority to give an opportunity to show cause against the action proposed to be taken against the petitioner under Sub-rule (3) of Rule 97 of the code. In this connection, reference may be made to Mahavir Prasad v. State of Bihar and Ors. 1998 PLJR 82 in which the decision of the Apex Court in Gopal Krishna Naidu v. State of Madhya Pradesh : (1968)11LLJ125SC was followed. In the present case, no opportunity to show cause was given to the petitioner before making the order under Sub-rule (3) of Rule 97 of the Code.

8. In the result, the application is allowed in part and portion of the impugned order contained in Annexure 8 which runs thus 'Iske Atirikta Nilamban A Wndhi Me Jiwan Nirbah Bha Tta Ke A Tirikta Koi Ra Shi Deya Nahin Hoga' is struck down, as invalid. This mater is remanded to the appellate authority to consider the question afresh after giving the petitioner reasenable opportunity to show cause against the action proposed to be taken against him under Sub-rule (3) of Rule 97 of the Code and to pass appropriate order in accordance with law, preferably within two months of receipt/production of certified copy of this order before him since the petitioner retired in 1992. There will be no order as to costs.