State of Bihar Vs. SerajuddIn Ansari

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Court : Jharkhand

Decided On : Mar-27-2008

Reported in : [2008(2)JCR494(Jhr)]

Judge : M. Karpaga Vinayagam, C.J. and; D.G.R. Patnaik, J.

Appellant : State of Bihar

Respondent : SerajuddIn Ansari

Disposition : Appeal dismissed

Judgement :

D.G.R. Patnaik, J.

1. Challenge in this appeal is made against the order dated 9.8.2001 passed by the learned single Judge in CWJC No. 643 of 2000, whereby the writ application was allowed.

This writ application was filed by the respondent No. 1/petitioner praying for quashing the order dated 29.12.1999 issued under the signature of Additional Secretary, Science and Technology Department, Government of Bihar, Patna communicating the decision of the Government declaring the period from 13.11.1981 to 27.10.1986 as unauthorized absence of the respondent No. 1/petitioner from the duty and rejecting the application filed by the respondent No.

1/petitioner for grant of extraordinary leave for the aforesaid period.

2. Facts of the case briefly stated are that the respondent No. 1/petitioner, was appointed as Assistant Professor in Electrical Engineering Department, Government of Bihar on regular basis on the recommendation made by Bihar Public Service Commission through the notification dated 19.8.1974. He was confirmed in his post with effect from 29.8.1975. Later, in 1981 he was appointed as Senior Electrical Engineer in Nigeria and on gaining such appointment, he applied to the Government for lien and for sanctioning permission for leave. In response, Government vide its letter dated 6.11.1981 granted him permission and sanctioned leave, whereafter he joined his service in Nigeria and continued there till 1986. Respondent No. 1/petitioner has claimed that while he was employed at Nigeria, he had sent applications at regular intervals to the State Government for extension of his leave, but the same remained pending and after expiry of the period of his service at Nigeria, he returned to India and submitted his joining in the Secretariat at Patna on 28.10.1986. His joining was accepted by the concerned Department of the State Government and he continued to remain in the Secretariat. Later, by notification dated 17.1.1987 he was transferred and posted in the Government Polytechnic College, Ranchi on the post of Assistant Professor where he joined and remained till November 1994. It was in the year 1994 that he submitted his letter of resignation, which was accepted by the Government on 14.11.1994 with immediate effect. Though, he had joined his post in the Government Polytechnic College, Ranchi in 1987, he was not paid his salary. After his retirement, the expected payment of gratuity, arrears of salary and leave encashment, etc. was not made despite several representations made by him. Consequently, he failed writ application vide CWJC No. 2807 of 1998 (R). While disposing of the writ application on 5.11.1999, the High Court directed the respondent (appellant herein) to take a decision on the pending application of the petitioner for grant of extraordinary leave for the period from 13.11.1981 to 27.10.1986. Almost one and half month after i.e. on 29.12.1999, by the impugned letter dated 29.12.1999 respondent No. 1/petitioner was informed that his leave application for the period from 13.11.1981 to 27.10.1986 was rejected.

Respondent No. 1/petitioner thereafter filed writ application (CWJC No. 643 of 2000) challenging the rejection of his prayer on the ground that it was illegal, arbitrary and mala fide and without application of mind.

Appellant/Respondent contested the claim of the petitioner on the ground that the purported applications of the petitioner for extension of his leave were never received in the department concerned and that the prayer for extraordinary leave was rejected by the Government according to rules.

The learned single Judge allowed the writ application with following observations:

11. In my view rejection of the application of the petitioner on the basis of the notes submitted by the Addl. Secretary who was biased because of his appearance in Court vis-a-vis sanctioning leave to similarly situated persons, amounts to serious hostile discrimination.

3. Assailing the order of the learned single Judge, counsel for the appellant would raise the same grounds as earlier advanced by the appellant in the writ petition. The contention of the learned Counsel is that the learned single Judge ought to have considered that the respondent No. 1 had negligently treated his absence as extraordinary leave without any order and this despite the fact that the respondent No. 1 was granted lien for one year only, that too with certain conditions and since he had failed to follow the condition, application for extraordinary leave was liable to be rejected. It is also contended that the respondent No. 1 has not completed ten years of service, which is qualifying for getting pensionary benefit either before leave or after his leave.

4. The grounds raised by the appellant are not at all persuasive and in the light of the facts of the case, the same are apparently misconceived.

5. It is not disputed that the respondent No. 1 had joined his service on 19.8.1974 initially on probation. He was confirmed in his post with effect from 29.8.1975. On his securing appointment in Nigeria, he had applied to the Government for sanctioning permission for leave. The Government vide its letter dated 6.11.1981 granted him permission to go abroad and sanctioned leave to him for a period of

one year. The respondent No. 1 during his tenure at Nigeria used to send his applications for extension of his leave. It is not denied that the applications were not received. The plea taken by the appellant was that the application for extension of leave ought to have been forwarded through the High Commission and in absence thereof, the leave applications could not be entertained. Apparently, though respondent No. 1 used to send his applications for extension of leave, but none of these applications were disposed of nor was he directed to return immediately.

6. In absence of any intimation from the Government that his application praying for extension of the period of leave was rejected, the respondent No. 1 could reasonably believe that the extension of leave was granted by the Government. The reason for such belief is further supplemented by the fact that after returning from Nigeria, the respondent No. 1 was admittedly allowed to join his post under the Government and he was placed in various Departments of the Government from 28.10.1986 till the date when his resignation was accepted by the Government on 14.11.1994. The period of his absence was neither treated as break in service nor was his resumption in office treated as fresh appointment. Yet, during this entire period, his application for extension of leave remained pending. Furthermore, even after accepting his request for separation from service, the Government withheld his payment of gratuity and other emoluments for years together without assigning any reason, compelling him ultimately to take recourse to the Court by filing writ application in 1998. The writ application was disposed of with a direction to the Government to consider the leave application and to take a final decision on the same. Such direction was issued on the basis of the assurance given by the Additional Secretary, who had to appear before the Court in person and to tender his apology. Within a month after disposal of the writ application, the decision rejecting the application for extension of leave was taken on the basis of the recommendation made by the Additional Secretary and the same was conveyed through the order impugned. From the language of the nothings and recommendation placed by the Additional Secretary before the Secretary and before the Minister concerned, the learned single Judge could discern that on account of his being compelled to appear before the Court and to tender his apology, the Additional Secretary had entertained bias against the

respondent No. 1. Both the Secretary and the Minister concerned had simply adopted the recommendation of the Additional Secretary without application of their mind.

7. It was also observed by the learned single Judge that while placing his recommendation, the Additional Secretary had omitted to mention that similarly situated other Government servants, whose names were specifically pointed out by the respondent No. 1, were granted extraordinary leave for the period of their absence, even though, initially, such prayer was refused by the Government and they were allowed to resume their services under the Government and to continue till their retirement, with all consequential benefits. The appellants have not assigned any reason whatsoever as to why the prayer of the respondent No. 1 for grant of extraordinary leave was disallowed while prayer of similarly situated employees of the State Government were allowed. The inference which clearly spells out from these facts, as rightly observed by the learned single Judge, is that rejection of the prayer of the respondent No. 1 was actuated by bias and without application of mind by the concerned authority and such rejection did amount to serious hostile discrimination.

8. For the reasons discussed above, we do not find any merit in this appeal. Accordingly, this appeal is dismissed.

M. Karpaga Vinayagam, C.J.

9. I agree.