

Arun Kumar Sinha Vs. State of Bihar and Ors

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Court : Jharkhand

Decided On : May-16-2016

Appellant : Arun Kumar Sinha

Respondent : State of Bihar and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 3997 of 2008
Arun Kumar Sinha, Son of Late Sheo Nandan Prasad, Resident of Village-
Tilauthu, P.O.-Rohtas, P.S.-Tilauthu, District-Rohtas (Bihar), Presently posted as
Sub Inspector of Police, Simdega, Jharkhand. Petitioners Versus 1. The State
of Bihar.

2. The State of Jharkhand.

3. Director General of Police, Jharkhand, Ranchi.

4. Dy. Inspector General of Police South Chhotanagpur Region, Ranchi
(Jharkhand).

5. Superintendent of Police, Simdega (Jharkhand). ... Respondents --- CORAM :
HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For the Petitioner : Dr. S. N.
Pathak, Sr. Advocate For the Respondents : M/s H. K. Mehta, A.A.G & Rakesh Kr.
Shahi, J.C to A.A.G ----- CAV on 11.03.2016 Pronounced on 16/05/ 2016 Per
Pramath Patnaik, J.

In the captioned writ application, the petitioner has sought for quashing the order dated 07.11.2006 (Annexure-6) and the order dated 22.08.2006 (Annexure-5) passed by the respondents pertaining to the punishment of reversion to the post of Sub Inspector of Police for two years and for issuance of writ of mandamus commanding the respondents to pay the arrear and difference of salary.

2. Bereft of unnecessary details, the facts as disclosed in the writ application is that while the petitioner was posted as Inspector of Police in the district of Simdega in the year 2005, charges were levelled against him for alleged misconduct and dereliction of duty vide letter dated 13.12.2005, Annexure-1 to the writ application. In pursuance to the said charges, the petitioner submitted his show cause reply. A departmental proceeding no.9/05 was initiated against him and the matter was inquired into by the inquiry officer, who submitted his report to the disciplinary authority as evident from Annexure-4 to the writ application. The disciplinary authority i.e. respondent 2 no.4 held the petitioner guilty of the charges and passed the order of reversion to the post of Sub Inspector of Police for two years vide order dated 22.08.2006, Annexure-5 to the writ application. Thereafter, the petitioner filed appeal before the respondent no.3, which was not entertained. Again, the petitioner preferred an appeal before the Inspector General of Police, Ranchi dated 17.11.2006 which was stated to be pending.

3. Dr. S. N. Pathak, learned senior counsel for the petitioner has submitted that the impugned order of punishment of reversion has been passed by the disciplinary authority basing on the report of the inquiry officer notwithstanding the facts that out of five charges, charge nos.1, 2, 3 and 5 have not been proved and only charge no.4 has been proved. But, the disciplinary authority without giving any cogent reasons has passed the order differing with the findings of the inquiry officer. The petitioner has not been given opportunity to file his reply on the question of disagreement between by the disciplinary authority and the report of the inquiry officer. Learned senior counsel for the petitioner further submits that before giving punishment of reversion, no second show cause notice has been issued, which has vitiated the disciplinary proceeding. Learned senior counsel for the petitioner has further submitted that the disciplinary authority have acted mala fide in imposing the order of punishment. During pendency of the writ application,

the order of the appellate authority dated 02.05.2009 has been passed, which has been brought on record by I.A No.1251 of 2016. Learned senior counsel for the petitioner further submits that the impugned order of punishment being affirmed by the appellate authority is harsh, excessive and not commensurate with the gravity of charges. Therefore, the action of the respondents is in infraction of Article 14 and 16 of the Constitution of India. 3 4. Mr. R. K. Shahi, learned counsel for the State during course of argument reiterated the averments made in the counter-affidavit. Learned counsel for the State has submitted that after completion of period of 2 years, the petitioner has been restored to his original cadre with effect from 22.08.2008 vide D.O. No.1419/08 dated 25.09.2008. It has further been submitted that difference of the salary of the petitioner in the last scale of pay of Sub Inspector of Police, i.e. with other admissible allowances have already been paid to the petitioner vide D.O. No.1523/08 Dated 27.10.2008 and the grievance of the petitioner to that effect has already been redressed.

5. After hearing learned counsel for the respective parties and having bestowed my anxious consideration to the documents of the records, I am of the considered view that the impugned order of punishment of reversion dated 22.08.2006 being affirmed by the appellate authority dated 02.05.2009 are fraught with legal infirmities, therefore, are not legally sustainable by the reasons stated hereinbelow:- (i) On perusal of the inquiry report, it appears that out of five charges except charge no.4, none of the charges have been proved. But the disciplinary authority has not given any reason of disagreement with the findings of the inquiry officer and on erroneous appreciation of evidences, have inflicted major punishment of reversion. (ii) In a full dressed departmental inquiry, where major punishment of reversion is imposed on the delinquent, all procedure of formalities are to be followed. But in the instant case, no second show cause notice has been issued prior to infliction of punishment, thereby debarring the petitioner from opportunity of showing cause to the proposed punishment. Therefore, there has been infraction of procedure which has resulted in vitiating the 4 proceeding and on that score, the impugned order of punishment is liable to be quashed. (iii) On perusal of the counter-affidavit, wherein it has been submitted that after lapse of two years, the impugned order of punishment of reversion for two years has lost its force and the petitioner has been restored to his original cadre with effect from

22.08.2008 vide D.O. No.1419/08 dated 25.09.2008. In view of the assertions in the counter-affidavit, the grievance of the petitioner so far as payment of difference of salary has already been redressed.

6. Viewed thus, the impugned order of punishment dated 22.08.2006 passed by the respondent no.4 and the order of the appellate authority dated 02.05.2009 affirming the order passed by the disciplinary authority are hereby quashed and set aside and in view of the quashment of the aforesaid orders, the petitioner is entitled to all legally admissible unpaid financial benefits.

7. With the aforesaid observations and directions, the writ petition stands disposed of.

8. Consequently, I.A No.1251 of 2016 also stands disposed of. (Pramath Patnaik, J.) RKM/- N.A.F.R.

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