

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.257 of 2008

IN

Civil Writ Jurisdiction Case No. 9670 of 2001

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Ramashray Pandey, son of late Badri Narayan Pandey (since deceased) through his L.Rs.

(i) Gulabi Devi, W/o Late Ramashray Pandey

(ii) Ashok Kumar Pandey

(iii) Sushil Kumar Pandey

(iv) Anant Kumar Pandey

(ii) to (iv) sons of late Ramashray Pandey

(v) Pramila Devi D/o late Ramashray Pandey

Resident of village and post office-Dihari, Police Station Rajpur, District-Buxar.

.... Appellant/s

Versus

1. The Rajendra Agricultural University, Bihar through its Registrar having its Headquarters at Pusa, District-Samastipur.
2. The Chancellor of the Universities of Bihar (Rajendra Agricultural University, Bihar,) Raj Bhawan, Patna.
3. The Vice Chancellor, Rajendra Agricultural University, Bihar, Post Office-Pusa, District-Samastipur.
4. The Director of Administration, Rajendra Agricultural University, Bihar, Post Office, Pusa, District-Samastipur.
5. The Regional Director, Agriculture Research Institute, Lohianagar, Patna.

.... Respondents- Respondent/s

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Appearance :

For the Appellant/s : Mr. Devi Das Srivastava, Advocate

For the Respondent/s : Mr. Devendra Kumar Sinha, Senior Advocate

Mr. Chandra Mohan Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 01-05-2015

The appellant was working as an Accountant-cum-Cashier-cum-Store Keeper in the 1st respondent- Rajendra Agriculture University. Departmental proceedings were initiated against him by serving a charge sheet dated 01.03.1996. An enquiry officer was appointed, and on the basis of the report submitted by him holding that the charges were proved, the Vice Chancellor passed order dated 08.01.1998 dismissing the appellant from service.

Aggrieved by that, the appellant filed an appeal before the Chancellor. While the appeal was pending, the appellant attained the age of superannuation on 28.02.2001. The Chancellor, however, passed an order on 06.09.2002 setting aside the order of punishment and remanding the matter to the Vice-Chancellor for fresh consideration and disposal. After the remand, the Vice-Chancellor passed an order dated 30.04.2003 reiterating his earlier stand. Appeal filed by the appellant before the Chancellor was rejected on 31.01.2004.

In this background, the appellant filed CWJC No.9670



of 2001 challenging the order of dismissal dated 30th April, 2003 as well as the rejection of the appeal. One of the contentions urged by the appellant was that through order dated 30.04.2003, the Vice-Chancellor dismissed the appellant retrospectively with effect from 08.01.1998 and the same is impermissible in law. The writ petition was opposed by the respondents. The learned Single Judge dismissed the writ petition through order dated 15.02.2008. Hence, this appeal.

Heard Sri Devi Das Srivastava, learned counsel for the appellants, and Sri Devendra Kumar Sinha, learned senior counsel for the respondents.

It is no doubt true that the retrospective dismissal of an employee is impermissible in law. Reference in this context may be made to the judgment of the Hon'ble Apex Court in *State Bank of Patiala and another v. Ram Niwas Bansal (dead) through L.Rs.*¹

Had the appellant been dismissed from service with retrospective effect, things would have been different altogether. The appellant was dismissed from service on 08.01.1998, after holding departmental enquiry. In the appeal preferred before him, the Chancellor took the view that the Vice Chancellor ought to have undertaken discussion with reference to the contentions advanced by

¹ AIR 2014 SC 1264



the appellant. It is important to note that by the time, the Chancellor allowed the appeal, the appellant had attained the age of superannuation. After remand, the Vice-Chancellor reiterated his earlier conclusions and dismissed the appeal. To be on safe side, he observed that the dismissal will be effective from the original date, i.e. 08.01.1998.

Two aspects become important here. The first is that in case, the contention of the appellant that he could not have been dismissed from service after he attained the age of superannuation is to be accepted, his appeal itself before the Chancellor would become untenable, after he attained the age of superannuation for the same reason. He cannot blow hot and cold, at one, and the same time, as it suits his convenience. If the appeal is capable of being dealt with, even after the appellant attained the age of superannuation, the disciplinary authority could have certainly examined the matter on remand, notwithstanding the fact that the appellant attained the age of superannuation.

The second is that the order under challenge would have been illegal, had it been a case, where the appellant was dismissed with retrospective effect for the first time. He had already been dismissed on 08.01.1998. On remand, the Vice Chancellor reiterated the same stand, and since the appellant had already

attained the age of superannuation, necessity had arisen to observe that the original order of dismissal will hold good.

The learned Single Judge has undertaken extensive discussion with reference to the relevant provisions of law and we are in full agreement with the conclusions arrived at by him. The appeal is, accordingly, dismissed.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Sudhir Singh, J)

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