

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7204 of 2001

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Raj Kumari Devi wife of Sri Doman Rabidas, resident of mohalla Company
Bagh, Bhagalpur, P.s. Town Bhagalpur, District Bhagalpur.

.... Petitioner/s

Versus

- 1.The State of Bihar.
- 2.The Secretary, Social Welfare, Government of Bihar, Patna.
- 3.The Director, Social Welfare, Government of Bihar, Patna.
- 4.The Deputy Director, Social Welfare, Bhagalpur Division, Bhagalpur.
- 5.The District Welfare officer, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mahashweta Chatterjee, Adv
Mr. Suresh Pd.Barnwalm, Adv

For the Respondent/s : Mr. M.K. Sinha SC-1 & Mr. S.K. Karn AC to
SC-1

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

5 10-08-2015 Heard learned counsel for the parties.

2. Assailing the impugned order of punishment by way of compulsory retirement of the petitioner dated 19.12.2000, Mrs. Mahasweta Chaterjee has straightway questioned the correctness of the aforesaid order of punishment on the ground that the inquiry report being in favour of the petitioner, if the disciplinary authority namely, Director, Welfare wanted to differ with the same and still pass the order of punishment, he was required to at least give reasons for differing with the inquiry report and that having been not done the action



of the Director, Welfare in straightway passing the order of punishment of compulsory retirement of the petitioner on receipt of the inquiry report dated 22.08.2000 is apparently illegal.

3. Learned counsel for the State has submitted that it is an admitted position that the petitioner who was appointed on temporary basis on the post of Peon in Day Care Centre in Bhagalpur on 06.11.1982, became unauthorizedly absent from duty and on 08.02.1985 till 25.11.1994 i.e. for a period over nine years and nine months. According to him, under the circumstances, the impugned order of punishment keeping in view the provisions of Rule-76 of the Bihar Service Code providing for automatic termination of service on the ground of absence from duty beyond the period of five years cannot be faulted either in fact or in law.

4. In the considered opinion of this Court, the aforesaid submission of learned counsel for the State has to be noted for its being rejected. As a matter of fact, the petitioner after when she had allegedly become fit for

joining the duty on 16.11.1994, had submitted her joining but then when the same was not accepted for a period of more than four years, this Court in the writ application filed by her being C.W.J.C No. 10534 of 1997 had held as follows:-

“The petitioner was appointed as Lady Orderly peon in a Day Care Centre at Bhagalpur on 06.11.1982. She worked regularly till 07.02.1985. She worked regularly till 7.2.1985 and from that date absented herself till she appeared again in the office on 16.11.1994 to give her joining report. The explanation furnished for her absence was that she suffered from tuberculosis and was undergoing treatment and it was only after being cured that she came to the office with a fitness certificate granted by the doctor. She makes the grievance that she was not being allowed to join her duties.

From the Counter affidavit it appears that according to the respondents she automatically ceased to be a government employee on being unauthorisedly absent for more than five years in terms of rule 76 of the Bihar Service Code.

The stand taken by the respondent authorities cannot be accepted for the simple reason that the rule relied upon by them was held bad and ultra-vires article 311 of the constitution in a Division Bench decision of this court in Smt. Pravawati Jain vs State of Bihar and others 1989 P.L.J.R 485.

Following that decision this writ petition has to be allowed in the same term.

The respondent authorities are accordingly directed to accept her joining without any further delay and then to proceed in the matter in accordance with law. It will be also open to the Government to take a decision whether having regard to her absence she is to be paid any part of her salary for the period of absence.

In the result this writ petition is allowed with the aforesaid observations.”



5. From the aforementioned inter parte order, it becomes clear that the concept of automatic termination of service in terms of rule-76 of Bihar Service Code was not accepted even at that point of time and therefore, there would be no difficulty in rejecting similar argument even today. As a matter of fact Rule-76 has already been declared to be ultra vires by this Court in the case of Prabhawati Jain vs the State of Bihar reported in 1989 PLJR 485, which also was taken note of in the aforementioned order of this Court dated 4.12.1998.

6. In this background when this Court would find that pursuant to the aforementioned order of this Court dated 04.12.1998, the joining of the petitioner was also accepted on 20.04.1999, subsequent drawing of departmental proceeding against the petitioner by framing memo of charge on 18.11.2000 had to be taken to its logical conclusion which envisages not only holding of regular departmental proceeding but also supplying copy of inquiry report for comment/reaction

and thereafter pass an order after affording opportunity of hearing by way of show cause notice to the delinquent.

7. In the present case, from the records, it is found that though a memo of charge was served against the petitioner on 18.01.2000, and she had denied the same, no departmental proceeding in the name had been conducted, inasmuch as, the inquiry officer himself has recorded in his inquiry report dated 22.08.2000, even presenting officer has not appeared before him. The inquiry officer, however, in the opinion of this Court did not fully exonerate the petitioner because his ultimate conclusion had been in the following terms इन्हें पूर्णतया दोषी नहीं माना जा सकता है

8. Such finding of the inquiry officer may be on the basis of whatever was placed before him may have lead to some inference to the Director, Welfare that a charge was partly established but then he had to go through the entire inquiry report so as to find as to whether the explanation of the petitioner of being



seriously ill and suffering from tuberculosis was a the main horse and she was unable to report on duty on account of the dreaded disease like tuberculosis. The Director, Welfare being the disciplinary authority had to also find out from the records as to whether the petitioner had given information as with regard to her being absent from duty for the period from 08.02.1985 to 15.11.1994. Nothing of this sort has been done and in fact the disciplinary authority without following the law laid down by the Apex court in the case of **Managing Director, ECIL, Hyderabad and Ors vs B. Karunakar and Ors**, reported in **1993(4) SCC 727**, had straightway proceeded to inflict the order of punishment of compulsory retirement .

9. The said order of punishment of Director, Welfare cannot be sustained on two grounds:-

(a) Firstly, the copy of the inquiry report was not given to the petitioner

(b) And secondly, no notice was given to the petitioner, which could have at least made her to explain

as to whether she was being punished even in respect of the charges which were not proved.

10. Let it be noted that when the inquiry officer has recorded in the inquiry report that the petitioner alone could not have been held to be fully guilty for the alleged misconduct for remaining absent from duty, his such finding were based on the analysis of the materials on record specially as with regard to no notice being published in the newspaper directing the petitioner to report on duty during the period of her unauthorized absence.

11. Under such circumstances, the disciplinary authority in the facts of this case was even otherwise required to give show cause notice alongwith a copy of the inquiry report for complying the principles of natural justice. That having been not done, this Court will have no difficulty in coming to the conclusion that the impugned order of punishment of compulsory retirement of the petitioner cannot be sustained, inasmuch as, the basic requirement of compliance of principles of natural

justice were not followed.

12. The question is as to what should be done after lapse of almost 15 years of the impugned order of compulsory retirement. From the records, it is found that the petitioner's date of birth is 02.04.1962, and thus on this basis she would be entitled to continue in service till completion of 60 years of age till April 2022. The petitioner therefore is still having seven years of service left.

13. There is yet another intervening circumstance which has to be taken note of. The petitioner was appointed on the post of Peon in the Day Care Centre at Bhagalpur and it is said that the entire establishment including the personnel has been transferred to Ranchi, thus the others were appointed or continuing along with the petitioner when she became unauthorized absent from duty while working on the post of Peon in the Day Care Centre at Bhagalpur in the Welfare Department had now become the employee of State of Jharkhand upon coming into force of Bihar Reorganization Act w.e.f.

15.11.2000.

14. This Court is not very sure as to the status of the petitioner because admittedly the impugned order of dismissal of the petitioner has been passed on 19.12.2000 by Director, Welfare which would mean that the State of Bihar has accepted the petitioner to be continuing in service after 15.11.2000, in the present State of Bihar.

15. Considering all these aspects, this Court while quashing the impugned order of compulsory retirement of the petitioner dated 19.12.2000, would remit the matter back to the Director, Welfare for proceeding from the Stage where the inquiry report was submitted against the petitioner. It would be open for the Director, Welfare to either close the matter by allowing the petitioner to be reinstated in service of course without benefit of any payment of salary for the intervening period but giving her all other benefit of continuance by way of seniority and continuation in service or in the alternative start the departmental proceeding de novo if the petitioner is



treated to be an employee of the State of Bihar. On the other hand if the entire establishment of Day Care Centre, Bhagalpur had stood transferred to the State of Jharkhand and the petitioner on account of her acceptance of joining under the order of this Court on 20.04.1999 vide the order of the Deputy Director, Welfare, Bhagalpur division, Bhagalpur would be deemed to have been transferred to the State of Jharkhand, the services of the petitioner should also be handed over to the State of Jharkhand with a liberty/opportunity to the State of Jharkhand to take steps from where the fatal error had occurred in course of departmental proceeding i.e after submission of the inquiry report dated 22.08.2000.

16. It is also made clear that if the petitioner's services should be retained in the State of Bihar as was probably done in view of the order of the Director, Welfare dated 19.12.2000, the date on which the petitioner was compulsory retired from service and if the department still feels the necessity of departmental

proceeding de novo for the charges which were framed against her on 18.12.2000, that also must be completed at the possible earliest point of time so that uncertainty of the petitioner comes to an end as soon as possible preferably within a period of six months from the date of receipt of this order.

17. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 10th August 2015
N.A.F.R./Ranjan/-

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