IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1179 of 2014
IN
Civil Review No. 179 of 2004

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1. The State of Bihar through Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. The Commissioner, Commercial Taxes Department-cum-Secretary-cum-Special Secretary, Commercial Tax Department, New Secretariat, Patna

.... Respondents/Petitioners/Appellant/s

Versus

Motilal Vidhyarthi, son of Sri Mahabir Rajak, resident of Bihar Shariff, District Nalanda, Retired Deputy Commissioner, Commercial Taxes Vigilance Monitoring, Darbhanga Division, Darbhanga

.... Petitioner/Respondent/Respondent

with

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Letters Patent Appeal No. 1663 of 2014
IN
Civil Writ Jurisdiction Case No. 2844 of 1999

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1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna
2. The Commissioner, Commercial Taxes Department, cum-Secretary-cum Special Secretary, Finance (Commercial Taxes) Department, Bihar, New Secretariat, Vikash Bhawan, Patna

.... Respondents/Appellants

Versus

Motilal Vidyarthi, S/o Sri Mahavir Rajak, R/o Ramanandpur, P.S. Murarpur, Distt. Nalanda, Retired Deputy Commissioner Commercial Taxes, Vigilance Monitoring, Darbhanga Division, District- Darbhanga

.... Petitioner/ Respondent/s

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Appearance :

(In LPA No. 1179 of 2014)

For the Appellant/s : Mr.Lalit Kishore, PAAG
Mr. Ranjeet Kumar, AC to PAAG

For the Respondent/s : Mr. Ratnesh Kumar Singh

(In No. 1663 of 2014)

For the Appellant/s : Mr.Lalit Kishore, PAAG
Mr. Ranjeet Kumar, AC to PAAG

For the Respondent/s : Mr. Ratnesh Kumar Singh

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Dae: 18-02-2015

A clear misstatement on the part of the respondent herein has resulted in several unnecessary proceedings.

The respondent was working as Deputy Collector of Commercial Taxes in the Government of Bihar. Departmental proceedings were initiated against him in 1996. Challenging the same he approached this Court by filing a writ petition. That was disposed of, with a direction to the Government to conclude the proceedings within a particular time. Contempt proceedings were initiated before this Court on the ground that the earlier order of this Court to complete the inquiry within the prescribed period was not complied with and the proceeding was continued without any disciplinary action against the respondent. Thus the disciplinary proceedings initiated in the year 1996 came to an end.

On a different set of charges in the year 1999, proceedings were initiated against the respondent so much so, that he was suspended through order dated 18.2.1999. The respondent filed IA No. 4324 of 1999 in CWJC No.2844 of 1999 with a prayer to stay the order of suspension. The order of suspension was suspended. However, the disciplinary enquiry was directed to go on.

The respondent attained the age of superannuation on 31.3.2003 and accordingly he retired from service. The writ petition was taken up for hearing on 19.7.2004. It was represented that no proceeding was initiated in terms of Rule-43B of the Bihar Pension Rules (hereinafter referred to as `the Rules') and accordingly the departmental proceedings initiated in the year 1999 lapsed. Accepting that representation, the learned Single Judge of this Court dismissed the writ petition as infructuous and recording that disciplinary proceedings against the petitioner stood lapsed.

The State of Bihar, the appellants herein, filed Civil Review Application No. 179 of 2014 with a prayer for review of the order in the writ petition. The principal contention was that soon after the retirement of the respondent, an order dated 29.8.2003 was issued converting the departmental proceeding into those under Section 43B of the Rules. The learned Single Judge however did not accept the contention and rejected the review petition through order dated 11.11.2011. Hence, these two Letters Patent Appeals.

LPA No. 1179 of 2014 is filed by the State Authorities against the order 11.11.2011 passed in Civil Review No. 179 of 2004 through which the learned Single Judge declined to review the order dated 19.7.2004 passed in CWJC No. 2844 of 1999. LPA No. 1663 of 2014 is filed by them, feeling aggrieved by the order dated 19.7.2004 passed by the learned Single Judge dismissing the writ petition as infructuous.

Heard Sri Ranjeet Kumar, learned counsel for the appellants and Sri Ratnesh Kumar Singh, learned counsel for the respondent.

The respondent was successful in scuttling the departmental proceedings on more than one occasion. The first set ended abruptly on account of the lapse of time stipulated by this Court. So far as the second set is concerned, though this Court suspended the order of suspension, it directed that the enquiry may go on. During the pendency of the writ petition, the respondent retired.

It is well established that in case a Government servant superannuates from his service during the pendency of a departmental proceeding, it shall be open to the Government to initiate proceedings under Rule-43B of the Rules after his superannuation. Such proceedings are treated as a continuation of those initiated, while the employee was in service. Specific representation was made before this Court on behalf of the respondent that no such proceedings under Rule-43B were initiated against him. The same is evident from the following portion of the order dated 19.7.2004 passed by the learned Single Judge in CWJC No. 2844 of 1999 –

> "Learned counsel for the petitioner submits that till date no proceeding in terms of Rule 43B of Bihar Pension Rules has been initiated against him.
>
> Since there is no proceeding in terms of Rule 43B of Bihar Pension Rules after superannuation of the petitioner, in my opinion, the petitioner cannot be proceeded against in the departmental proceeding so earlier initiated in terms of Rule 55 of the Rules. By efflux of time this application, thus, has become infructuous. It is accordingly dismissed. Learned counsel for the petitioner, however, seeks liberty to agitate the matter pertaining to his promotion and payment of consequential monetary benefits. The dismissal of this writ application, however, will not come in the way of the petitioner to agitate the matter for his notional promotion and payment of consequential benefits."

It was specifically urged by the appellants that an order was passed on 29.8.2003 under Rule 43B of the Rules, long before the writ petition was disposed of and that the disciplinary proceedings were converted into those under the Rules. A copy thereof was filed along with the Review application. In the grounds of review, it was clearly mentioned that after initiation of proceeding under Rule 43B the respondent appeared through Advocate on 29.9.2003 and 10.11.2003. In the counter affidavit filed by the respondent, an indirect and vague statement was made and it was not disputed that proceedings under Rule 43B were initiated. It is rather curious that on the basis of the order passed in the writ petition the second set of disciplinary proceedings were also closed. The net result was that the allegation of misconduct against the respondent remained unenquired. Further, this is not a case in which any question of lack of jurisdiction is pleaded.

We are of the view that a clear factual error crept into the order dated 19.7.2004 passed in CWJC No. 2844 of 1999. We, therefore, allow Letters Patent Appeal No. 1179 of 2014 and set aside the order of the learned Single Judge. As a consequence, Letters Patent Appeal No. 1663 of 2014 has become infructuous and it is dismissed accordingly.

The matters are remanded to the learned Single Judge for fresh disposal on merits, with a request that, the same be disposed of within two months.

Interlocutory Applications shall stand disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

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