IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10421 of 2016

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Sidheshwar Rai, Son of Late Parma Rai, resident of village and Post office Dhanchhuha, Police Station Chauri, District - Bhojpur

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Government of Bihar, Patna
3. The Inspector General of Police, Railway, Patna
4. The Deputy Inspector General of Police, Railway, Bihar, Patna
5. The Deputy Inspector General of Police, Rail Zone, Bihar
6. The Superintendent of Police, Railway, Patna

... ... Respondent/s

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Appearance :
For the Petitioner/s : Ms. Mahasweta Chatterjee, Advocate
Mr. Basant Kumar Mishra, Advocate
Mr. Samir Kumar Sinha, Advocate
For the Respondent/s : Mrs. Archana Meenakshee, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date : 23-09-2021

Shorn of unnecessary details, short facts relevant for determination of this Court in the present application are that on the allegation of certain misconduct a disciplinary proceeding was initiated against the petitioner which culminated into passing of an order of dismissal from service dated 29.02.2008, by the Disciplinary Authority. The petitioner's appeal before the Appellate Authority and mercy petition before the Director General of Police, Bihar were also rejected.

2. The petitioner, at the relevant point of time, was

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posted in Patna Rail Police. A complain that he was demanding illegal money for allowing passengers to board a train, was the basis for initiating the said disciplinary proceeding against him. Aggrieved by the decision of the Disciplinary Authority, Appellate Authority and the order passed by the Director General of Police, Bihar the petitioner had earlier approached this Court by filing writ petition giving rise to CWJC No. 9438 of 2011. The writ petition was partly allowed by an order dated 10.12.2013 in following terms :-

> *"15. As the charge of demanding money which is one of the two charges is not proved against the petitioner the matter is remitted for fresh consideration on quantum of sentence. It would be open for respondents to inflict any punishment including one of compulsory retirement or any other punishment without prejudice. In the result, the impugned order of dismissal passed by Superintendent of Police, Rail as well as appellate orders of the DIG and the Director General of Police are set aside and the matter is remanded to the respondents for passing afresh order in accordance with law. The position existing immediately prior to dismissal order is restored. (Underlined for emphasis)*

3. It is evident from the observation made by this

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Court in the order dated 10.12.2013 that in the Court's opinion the charge of demanding money could not be proved against the petitioner. The matter was remanded back to the Disciplinary Authority for consideration on quantum of punishment. This Court had pointed out that it would be open for the respondents to inflict any punishment including one of the compulsory retirement. The Court had further ordered that the position existing immediately prior to dismissal order would stand restored.

4. Admittedly, by virtue of the order of this Court dated 10.12.2013, passed in CWJC No. 9438 of 2011, the petitioner was required to be reinstated in service with effect from the date of his dismissal.

5. This is not in dispute that after filing of the contempt application, the Director General of Police issued an order dated 29.09.2015 imposing punishment of compulsory retirement in place of dismissal, but to be effective from a retrospective date i.e. the date of the order of dismissal (29.02.2008).

6. The State of Bihar has preferred a Letters Patent Appeal registered as LPA No. 1875 of 2015 against this Court's order dated 10.12.2013, passed in CWJC No. 9438 of 2011,

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which is said to be pending. The Director General of Police in his order dated 29.09.2015 has recorded that the said order shall be subject to outcome of the Letters Patent Appeal preferred against the said order of this Court dated 10.12.2013. In compliance of the order of the Director General of Police dated 29.09.2015 the Superintendent of Police (Railway) Patna has passed order of the same date i.e. 29.09.2015 communicating punishment of compulsory retirement from the date of dismissal from service of the petitioner.

7. This writ application has been filed, in the aforesaid background, seeking quashing of the two orders dated 29.05.2015, passed by the director General of Police, Bihar and the Superintendent of Police (Railway), Patna.

8. A counter affidavit has been filed on behalf of the State of Bihar.

9. I have heard Ms. Mahasweta Chatterjee, learned counsel for the petitioner and Mrs. Archana Meenakshee, learned counsel representing the State of Bihar.

10. Ms. Chatterjee, learned counsel appearing on behalf of the petitioner has contended that by operation of the order of this Court dated 10.12.2013, passed in CWJC No. 9438 of 2011 the petitioner stood reinstated in service with effect

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from the date of his dismissal i.e. 29.02.2008. She contends that the order of compulsory retirement cannot have retrospective effect and the petitioner needs to be treated in service from the date when the earlier order of dismissal was passed, as in the light of the direction of this Court he was required to be reinstated and his position was required to be restored as the same existed prior to passing of the dismissal order.

11. Mrs. Archana Meenakshi, learned counsel for the State, *per contra*, has submitted that the petitioner was dismissed from service because of gross misconduct proved against him. While interfering with the order of dismissal dated 29.02.2008 this Court appears to have found the punishment of dismissal to be disproportionate as the main allegation against the petitioner of demanding illegal money, in the Court's opinion, was not found proved in the departmental proceeding. In such circumstance, the department considered it appropriate to impose punishment of compulsory retirement in place of order of dismissal. She has submitted that, in such circumstance, the order imposing punishment of compulsory retirement with effect from the date of dismissal cannot be said to be unreasonably suffering from any illegality.

12. On perusal of the pleadings on record and

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considering the rival submissions made on behalf of the parties, I find substance in submission made on behalf of the petitioner. The order of compulsory retirement could not have been given effect to retrospectively in view of the clear direction of this Court to the respondents to restore the petitioner's position as was existing immediately prior to the order of dismissal from service.

13. In this regard, I may usefully refer to a Supreme Court's decision in case of ***R. Jeevaratnam vs. State of Bihar (AIR 1966 SC 951)***. In the said case, the appellant before the Supreme Court was placed under suspension on May 20, 1949 on the allegation of acceptance of illegal gratification. On the basis of report submitted in a departmental inquiry he was dismissed from service by an order dated 17.10.1950 with effect from the date of the order of suspension. The Government servant had preferred a suit which was dismissed by the trial court and affirmed on appeal by the High Court of Madras.

14. On appeal to the Supreme Court, it held that an order of dismissal with retrospective effect was unreasonable. The Supreme Court, however, refused to interfere with the order of dismissal and held that the said part of the order was severable from the part whereby the order of dismissal was

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made retrospective. Paragraph 4 of the said decision is relevant, which is being quoted hereinbelow :-

> *"4. The order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say, from May 20, 1949. In substance, this order directed that (1) the appellant be dismissed, and (2) the dismissal do operate retrospectively as from May 20, 1949. The two parts of this composite order are separable. The first part of the order operates as a dismissal of the appellant as from October 17, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service."*

15. The Supreme Court, in no uncertain terms, held that the two parts of the order are clearly separable and even assuming that the second part of the order was invalid, there was no reason why the first part of the order should not be given the fullest effect.

16. Reference may also be made in this connection in case of ***State Bank of Patiala and another vs. Ram Niwas***

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Bansal reported in **(*2014)12 SCC 106***. In the said case, the respondent before the Supreme Court was proceeded against by the employer bank on the charge of misconduct which has resulted into an order imposing punishment of removal from service. The order of removal from service was set aside by a Full Bench of Punjab and Haryana High Court by an order dated 22.05.1998 and the matter was remanded back to the Disciplinary Authority to grant the petitioner an opportunity to reply to the inquiry report and thereafter pass appropriate orders after granting personal hearing. The Civil Appeal was finally dismissed by the Supreme Court on 06.12.1999. In compliance of the Full Bench decision of Punjab and Haryana High Court the Disciplinary Authority passed an order of removal on 22.11.2001 with effect from 23.04.1985, when the order of removal from service was initially passed. The Supreme Court analyzing the law held in case of ***Ram Niwas Bansal*** (supra) that an order of dismissal cannot be retrospective, held that it was impermissible for the bank in 2001 to have passed an order with effect from 23.04.1985 which would amount annulment of the order dated 22.05.1998 of the High Court. The Supreme Court concluded that the concept of deemed continuance of service of the officer would have full play and, therefore, the

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order of removal could have been passed after finalization of departmental proceeding. The said order could not have been made retrospective. Paragraph 41 of the Supreme Court's decision in case of ***Ram Niwas Bansal*** (supra) reads as under :-

> ***"41.*** *In the case at hand, the disciplinary proceeding was initiated against the delinquent officer while he was in service. The first order of dismissal was passed on 23-4-1985. The said order of punishment was set aside by the High Court and the officer concerned was directed to be reinstated for the limited purpose i.e. supply of enquiry report and to proceed in the disciplinary proceeding from that stage. The said order was not interfered with by this Court. The Bank continued the proceeding. Needless to emphasise, the said continuance was in pursuance of the order of the Court. Under these circumstances, it has to be accepted that the concept of deemed continuance in service of the officer would have full play and, therefore, an order of removal could have been passed after finalisation of the departmental proceeding on 22-11-2001. We have already held that the said order would not have been made retrospectively operative, but that will not invalidate the order of dismissal but it would only have prospective effect as has been held in R. Jeevaratnam [R. Jeevaratnam*

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v. State of Madras, AIR 1966 SC 951] .”

17. In my view, the aforesaid enunciation of law by the Supreme Court in case of ***Ram Niwas Bansal*** (supra) applies in the present case with full force.

18. In the present case, the impugned order making the punishment of compulsory retirement operative from a retrospective date will have the consequence of nullifying and modifying the order of this Court dated 10.12.2013, passed in CWJC No. 9438 of 2011. By the said order, the petitioner was directed to be reinstated. The respondents could not have passed an order having the effect of removal of petitioner from service with effect from the date when the petitioner was deemed to be continuing in service by virtue of this Court’s order.

19. Considering the above factual and legal position, in the Court’s opinion, the impugned order requires interference to the only effect that though the entire order cannot be invalidated but the said order can have prospective effect only, as has been held in case of ***R. Jeevaratnam*** (supra) and ***Ram Niwas Bansal*** (supra).

20. This application is accordingly allowed to the aforesaid extent. It is accordingly declared that the impugned order shall operate prospectively.

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21. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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