

SUPREME COURT OF INDIA

Bindeshwari Chaudhary

Vs.

State of Bihar & Ors.

C.A.No.3829 of 2011

(J.Chelameswar and Prafulla C.Pant,JJ.,)

29.11.2016

JUDGMENT

Prafulla C.Pant,J.,

1. This appeal is directed against judgment and order dated 20.05.2008, passed by High Court of Judicature at Patna, whereby Letters Patent Appeal No. 436 of 2000 was disposed of allowing respondent authorities to withhold 50% of gratuity and 50% of pension, of the appellant.

2. Brief facts of the case are that appellant who was posted as Executive Engineer with Irrigation Department of State of Bihar, in the District of Singhbhum, awarded a contract on 29.08.1989 to one M/s. D.K. Road Lines, for bed and slope lining of canal in Galudih. In terms of the contract, the contractor was required to furnish bank guarantee, and the same was submitted by him for an amount of Rs.23,61,500/-. In order to verify the genuineness of the bank guarantee furnished by the contractor, the appellant sent his Accounts Clerk to Punjab & Sindh Bank, Jamshedpur, with letter dated 29.08.1989 (Annexure-P1). In response to said letter, appellant received letter dated 01.09.1989 (Annexure-P-3) from Shri T.S. Gandhok, Branch Manager of the bank, confirming the bank guarantee. The appellant made payment of Rs.15,00,000/- on 02.09.1989 towards mobilization advance to the contractor. On 04.09.1989, Superintending Engineer, issued letter (Annexure P-4), directing the appellant not to make mobilization advance. But, subsequently said authority allowed the appellant to make second mobilization advance to the contractor vide its letter dated 27.10.1989, consequently the appellant released payment of Rs.8,60,000/- on 31.10.1989 towards second mobilization advance. After three months, the Superintending Engineer, vide letter dated 23.12.1989 (Annexure-P-5) approved the work done by M/s D.K. Road Lines assessing the work done at Rs.42,79,021/-. On 12.02.1990, the appellant made further payment of Rs.2.55 lacs.

3. Meanwhile, when new Manager took over the charge of Jamshedpur Branch of Punjab & Sindh Bank, issued letter dated 13.02.1990 (Annexure-P-7), asking the appellant to send photocopy of the bank guarantee in question. And vide letter dated 20.03.1990 (Annexure-P-

8) the new Manager informed the appellant that no such bank guarantee has been issued by the bank. Appellant has pleaded that he received said letter on 10.04.1990, and by then the appellant had released further payment of Rs.7.33 lacs towards bill of the contractor. On 04.05.1990, bank cancelled its earlier communication dated 01.09.1989. The appellant finally released Rs.4.4 lacs towards current bill of the contractor, whereafter he was transferred on 11.06.1990 to Daltanganj. It appears that C.B.I. registered a case RC37(A)/91, Patna in pursuance to the fraudulent/forged bank guarantee furnished by the contractor.

4. On 04.04.1991, appellant was placed under suspension in contemplation of departmental proceedings. The appellant challenged order of suspension in Writ Petition C.W.J.C. No. 2673 of 1991 before the High Court which was disposed of with the observation that if charge sheet is not served within three weeks on the appellant, the suspension order shall stand quashed. On 13.06.1991 the respondent authorities served charge sheet (dated 02.05.1991) on the appellant, relating to payment of unsecured advance of Rs.14.5 lacs to the contractor. The appellant then filed another Writ Petition C.W.J.C. No. 4439 of 1991 once again seeking quashing of the suspension order, and the High Court vide its order dated 10.10.1991, quashed the same. The respondent authorities vide order dated 05.12.1991 (Annexure-P12) revoked the suspension order, and departmental enquiry was dropped. Consequently on 14.01.1992, the appellant joined his new assignment as a Technical Advisor to Water Nigam Circle, Dumka.

5. After investigation, C.B.I. submitted charge sheet against accused T.S. Gandhok, Manager of Punjab & Sindh Bank who confirmed the bank guarantee, and accused Ramdahin Singh, Senior Accounts Clerk of the Irrigation Department who received the bank guarantee from the contractor and verified. The appellant has pleaded that he is not accused in the charge sheet, still on 18.06.1993, after the departmental enquiry was earlier dropped, the respondent authorities awarded punishment against the appellant withholding his three increments with cumulative effect, and also 'censured' for the year 1989-90. As such, third C.W.J.C. No. 942 of 1994 was filed by the appellant challenging the above order of punishment. The said writ petition was allowed on 23.03.1995 by the High Court holding that withholding of three increments with cumulative effect is a major punishment, and could not have been awarded without resorting to regular departmental enquiry. However punishment of "Censure" was not interfered with by the High Court.

6. On 20th May, 1995, the respondent authorities initiated fresh departmental enquiry against the appellant, and second charge sheet (Annexure-P13) was served on him relating to the same allegations of release of unsecured advance of Rs. 14.5 lacs to the contractor against the order of Superintending Engineer. The appellant filed his objections and participated in the enquiry. The enquiry report dated 18.10.1996 (enclosure with the Annexure P-17) was submitted by the enquiry officer to the State Government with the finding that part of the charge stood proved. Consequently, show cause notice dated 23.10.1996 was issued to the appellant to which he responded on 07.01.1997. Thereafter the appellant stood retired on 31.01.1997. On 24.09.1997, appellant was awarded punishment of withholding of 100% pension and gratuity.

7. Finally, the appellant filed fourth Writ Petition C.W.J.C. No. 11788 of 1997 before the High Court challenging the order of withholding of pension and gratuity. During the pendency of said writ petition, another show cause notice dated 17.06.1998 (Annexure-P18) was issued against the appellant under Rule 43 (b) read with Rule 139 of Bihar Pension Rules, as to why the pension benefits be not decided at zero. The High Court, vide its order dated 04.12.1998, dismissed the writ petition. Aggrieved by said order, Letters Patent Appeal No. 436 of 2000 was filed by the appellant which was disposed of by the High Court vide impugned order dated 20.05.2008 restricting withholding of gratuity and pension to the extent of fifty percent.

8. Challenging the impugned order, Shri Das, learned counsel for appellant argued that action of the appellant in releasing the payment to the contractor was bonafide as the bank guarantee submitted by him was got verified from the Branch Manager of the Bank, and by the communication dated 01.09.1989 (Annexure-P3), the bank confirmed the bank guarantee in question. In this connection, it is further pointed out that after investigation, it is only Ramdahin Singh, official of the department, and Shri T.S. Gandhok, the then Branch Manager of the bank, are facing the trial, and not the appellant. It is further submitted that it is not a case where the appellant has caused pecuniary loss to the department, as the payments made to the contractor were either permissible mobilization advances or against the running bills. It is also contended that after the High Court quashed the punishment earlier awarded by the respondent authorities vide order dated 23.03.1995 passed in C.W.J.C. No. 942 of 1994, fresh departmental enquiry was not maintainable. Lastly, it is contended that from the evidence on record charge against the appellant cannot be said to have been proved.

9. On the other hand, Shri Shivam Singh, learned counsel for the respondent authorities submitted that Rule 43(b) read with Rule 139 of Bihar Pension Rules empowers the State Government to withhold the pension and gratuity of the employee, and the respondent authorities have done so for the sufficient reasons.

10. We have considered the submissions of learned counsel for the parties. The first charge sheet was admittedly served on the appellant on 13.06.1991, which was revoked consequent to order dated 10.10.1991, passed by the High Court in C.W.J.C. No. 4439 of 1991, whereby the suspension order issued against the appellant was quashed. By the same order dated 05.12.1991 (Annexure P-12) departmental enquiry was also dropped. Fresh charge sheet was served on the appellant on 20.05.1995 in the same matter. It is pertinent to mention here that when High Court in earlier round quashed the major punishment of withholding of three increments with cumulative effect, it did not disturb the minor punishment 'censure' awarded against the employee. However, the High Court did observe that action can be taken in accordance with law.

11. The communication dated 29.08.1989 (Annexure P-1) sent by the appellant from the Branch Manager of the Bank, and reply dated 01.09.1989 (Annexure P-3) confirming bank

guarantee received from the Bank are not disputed. It is also not disputed that after investigation C.B.I. found evidence against the then Branch Manager, and Ramdahin Singh, Senior Accounts Clerk of the appellant, as the persons responsible with the contractor, in the matter. It is also nobody's case that the appellant caused pecuniary loss to the exchequer. In the light of above, we find force in submission of learned counsel of the appellant that the appellant was bonafide in making the payment in question to the contractor, as he did make enquiries from the bank concerned before releasing mobilizing advance to the contractor. Copy of letter dated 29.08.1989 (Annexure-P1) sent by the appellant to Manager of Punjab & Sindh Bank is reproduced below:-

*“OFFICE OF THE EXECUTIVE ENGINEER
IRRIGATION DIVISION, GALUDIHI*

Letter No. 916/Galudih/

Dated:29-08-1989

To,
The Manager,
Punjab and Sindh Bank,
Jamshedpur

Subject: Confirmation of Bank Guarantee No. 20/89 dated 29-08-1989 for Rs. 23,61,500/- issued in the name of Executive Engineer, Irrigation Division on behalf of M/s. D.K. Road Lines.

Dear Sir,

The above Bank Guarantee has been submitted by M/s. D.K. Road Lines as a security performance which has been issued by your Bank. It is, therefore, requested to please confirm the issue through Sri Ramdahin Singh, S.A.C of this Division, who is deputed in your bank for the purpose. It is also requested to please confirm the issue in future if any guarantee issued in my favour without waiting for any request letter.

Yours faithfully,

*Sd/-
Executive Engineer
IRRIGATION DIVISION, GALUDIHI”*

In response to above, letter dated 01.09.1989 (Annexure-P3) appears to have been received by the appellant from the bank. The said letter reads as under:-

*“PUNJAB AND SINDH BANK
JAMSHEDPUR*

Dated: 01-09-1989

To,

The Executive Engineer,
Irrigation Division,
Galudih

Sir,

Ref: Your letter No.916/Galudih dated 29-08-1989.

In response to your letter mentioned above, we hereby confirm having issued bank guarantee No. 20/89 dated 29-08-1989 for Rs. 23,61,500/- and B.G. No. 21/89 dated 31-08-1989 for Rs. 23,61,500/- in your favour on behalf of M/s. D.K. Roadlines.

This is for your information please.

For PUNJAB & SINDH BANK

*Sd/- T.S. Gandhok,
Manager, Jamshedpur”*

12. The Enquiry Report dated 18.10.1996 (enclosure to Annexure P-17), in its para 8, shows that though it is mentioned that charge is proved against the appellant in the enquiry, but the finding is based on earlier enquiry report. The earlier enquiry report was in question in C.W.J.C. No. 942 of 1994 in which punishment of withholding of three increments with cumulative effect was quashed. The authorities could not and should not have relied upon said enquiry report as basis in fresh enquiry for holding the appellant guilty of the charge and to award punishment of withholding of pension and gratuity. In the circumstances, we do not find that there was sufficient reason for the respondent authorities to exercise the powers under Rule 43 (b) read with Rule 139 of Bihar Pension Rules as neither there was pecuniary loss to the State, nor the present case is of a grave misconduct on the part of the appellant.

13. For the reasons as discussed above, we are inclined to interfere with the impugned order passed by the High Court. Therefore, the appeal is allowed. The orders dated 24.09.1997 and 17.06.1998, passed by the respondent authorities shall stand quashed. No order as to costs.