

Mahendra Prasad Singh @ Mahendra Singh vs State Of Bihar & Ors on 8 April, 2011

Equivalent citations: AIR 2011 SUPREME COURT 1790, 2011 (13) SCC 118, 2011 AIR SCW 2619, 2011 LAB. I. C. 3081, 2011 (2) AIR JHAR R 735, (2011) 3 SCT 33, (2011) 3 SERVLR 221, (2011) 4 SCALE 508, (2011) 2 ESC 334, (2011) 2 SERVLJ 220, 2011 (8) ADJ 55 NOC

Author: Anil R. Dave

Bench: Anil R. Dave, Mukundakam Sharma

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NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3131 OF 2011

(Arising out of S.L.P.(C) No.28448 of 2008)

Mahendra Prasad Singh @ Mahendra Singh

.....Appellant.

Versus

State of Bihar & Ors.

.....Respondents

J U D G M E N T

ANIL R. DAVE, J.

1. Leave granted.

2. Being aggrieved by the Judgment and Order dated 26th June, 2008 delivered in LPA No.978 of 2007 by the High Court of Judicature at Patna, this appeal has been filed by the original petitioner-appellant herein.

3. The appellant was appointed as a constable and while undergoing training at Commandant Training Centre, B.M.P.-

1, Ranchi he was placed under suspension. During the period of suspension he had absconded from the Training Centre, Ranchi without giving any intimation to any authority.

Thereafter, he had returned to Palamu Headquarters and had reported his arrival. Thus, he had unauthorizedly remained absent for 105 days. In view of his above stated misconduct, the departmental inquiry had been conducted and as a result of inquiry proceeding, by an order dated 14th September, 1977, his services had been brought to an end by way of punishment.

4. Being aggrieved by the order of punishment, the appellant filed an appeal before the Deputy Inspector General of Police, S.C.R., Ranchi, who did not find any substance in the appeal and, therefore, dismissed the same.

5. Thereafter, the appellant made a representation to the Director General & Inspector General of Police, Bihar at Patna for his reinstatement on 7th January, 1989. The said representation was also turned down by the Director General & Inspector General of Police, Bihar. It appears from the order dated 28th July, 1989, passed by the Director General & Inspector General of Police, Bihar, that the appellant had also made a representation earlier but the said representation had been rejected.

6. The appellant was not aggrieved by the order of punishment but he was aggrieved because no pension was paid to him. Therefore, after about 10 years, he filed C.W.J.C. No.1971/2000 in the High Court of Judicature at Patna. In the said petition a direction was given to the concerned authorities to look into the grievance of the petitioner. By giving such direction, the petition was disposed of on 29th February, 2000.

7. In pursuance of the aforesaid order passed by the High Court, the concerned authorities considered the case of the appellant and came to the conclusion that he was not entitled to any pension as he was removed from service. Final decision was communicated to the appellant by the Superintendent of Police, Palamu on 10.6.2001.

8. Being aggrieved by the Order dated 10th June, 2001, the appellant filed C.W.J.C. No.8260 of 2002. After hearing the concerned parties, the said petition was rejected on 28th September, 2007.

9. Being aggrieved by the Order rejecting the petition, the appellant filed L.P.A. No.978 of 2007 which was also dismissed on 26th June, 2008 and, therefore, the appellant filed the present appeal wherein the order dated 26th June, 2007 dismissing the Letters Patent Appeal has been challenged.

10. Leaned senior counsel Mr. Nagendra Rai appearing for the appellant has very fairly submitted that the appellant was not aggrieved by the order whereby his service was terminated but he was aggrieved as he was not being paid pension. He submitted that according to Rule 46 of Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules'), unless an employee has been dismissed or removed from service for misconduct, insolvency or inefficiency, the employee would get pension upon termination of his service. He further submitted that the appellant had neither been dismissed nor been removed but he had been discharged from service by the order dated 14th September, 1977 and, therefore, the appellant was entitled to get pension. So as to substantiate his case, he relied upon the following judgments: (1) Raghunandan Mishra v.

State of Bihar and others, 1985 BLJ 721; (2) Fagoo Paswan v.

The State of Bihar & ors., 1999(1) PLJR210 and (3) Vijoy Narain Jha v. The State of Bihar & others, 2000(1) BLJ 452.

11. On the other hand, the learned counsel appearing for the State supported the orders passed by the authorities below and the High Court and submitted that the appellant is not entitled to get any pension for the reason that he had been dismissed from service by virtue of the order dated 14th September, 1977.

He very fairly submitted that a mistake had been committed by the Superintendent of Police who had passed the order terminating the service while using the word 'discharge' instead of 'dismiss'. He took us through the said order which gives details about the circumstances in which the departmental proceedings had been initiated against the appellant and upon finding him guilty, the order of punishment had been passed by the Superintendent of Police.

He submitted that looking to the tenor of the said order, it is clear that the Superintendent of Police, Palamu, considered seriousness of the misconduct of the appellant and he observed in the order that looking to the misconduct, the appellant must be dismissed from the service but somehow in the last paragraph, instead of word 'dismissed' the word 'discharged' was used. The learned counsel further submitted that, in fact, there is no punishment of discharge in the police manual. He referred to the relevant provisions of the Bihar Police Manual, which deals with the punishments which can be inflicted upon police personnel, and he also submitted that there is no punishment of 'discharge from service'.

12. He further submitted that even according to Rule 46 of the Rules, if anyone has been dismissed or removed from service because of any misconduct, the said employee would not be entitled to get any pension. He further submitted that upon perusal of the order imposing punishment, it was clear that the appellant was dismissed from service, though the term 'discharge' was used in the impugned order. He, therefore, submitted that the appeal be dismissed as the appellant is not

entitled to pension.

13. We heard learned counsel at length. It is pertinent to note that though the order of punishment was passed on 14th September, 1977, which had been confirmed on 4th April, 1978, by the Deputy Inspector General of Police, S.C.R., Ranchi, the appellant filed a petition making a grievance regarding non payment of pension in 2000. As the appellant had made a prayer for pension, the High Court gave a direction for considering the appellant's case for payment of pension. The concerned authorities considered the appellant's case and looking to the provisions of the Rules, came to the conclusion that the appellant was not liable to get any pension and his request for pension was rejected. Thereafter another petition was filed by the appellant, which was also rejected and, therefore, he filed an L.P.A., which was also dismissed and, therefore, the present appeal was filed.

14. In our opinion, the authorities and the High Court were right in coming to the conclusion that as the appellant was removed from service by way of dismissal on account of his misconduct, the appellant was not entitled to get any pension as per Rule 46 of the Rules.

15. It is pertinent to note that according to the provisions of Rule 107 of the Rules, there can be four types of pensions as narrated in the said Rule - i) Compensation pensions (ii) Invalid pensions (iii) Superannuation pensions and (iv) Retiring pensions. The appellant could not make out any case for entitlement of any of the pensions referred to hereinabove.

The learned counsel appearing for the appellant also could not point out any provision enabling the appellant to get pension.

16. In view of the fact that the service of the appellant had been terminated by way of punishment on account of his misconduct, in our opinion, the High Court rightly dismissed the appeal filed by the appellant. We agree with the view expressed by the High Court.

17. Upon examining the order of punishment, we find that the Superintendent of Police, Palamu, who had passed the order of punishment had discussed the gravity of the misconduct of the appellant and ultimately he passed the order of punishment dated 14th September, 1977, whereby service of the appellant was terminated. Though in the said order the Superintendent of Police, Palamu inflicted punishment of 'discharge' from service, as stated hereinabove, there is no punishment like 'discharge' from service. We are in agreement with the submission made on behalf of the learned counsel appearing for the Authorities that a mistake was committed by the Superintendent of Police by stating that the appellant was discharged from service. In fact, he ought to have stated that the appellant was dismissed from service. An order is to be read in entirety and upon such reading, the intention behind passing of the order is to be understood. The order is not to be read by taking notice of only one or two words of the order. If one reads the present order in entirety, there could be no two opinions that it is an order of removal from service by way of dismissal. Upon reading the said order of punishment, we are also of the view that the Superintendent of Police had duly considered the gravity of the misconduct and also mentioned in the body of the order that the appellant deserved dismissal but in the final operative portion of the

order some mistake was committed. Such a mistake would not enable the appellant to get pension which otherwise he was not entitled to. Even the Hindi word used by the Superintendent of Police "Seva Samapta" if read in the context of the facts would mean that on account of the misconduct of the appellant he was dismissed from service as there is no punishment of 'discharge' from service in the Bihar Police Manual.

18. In our opinion, provisions of Rule 46 of the Rules would not help the appellant especially because his service was terminated due to his misconduct. It is an admitted fact that due to his misconduct, his service was terminated or he was removed from service and, therefore, also, in our opinion, the appellant would not be entitled to any pension.

19. For the aforesaid reasons, we do not see any reason to interfere with the just and proper order passed by the High Court. Therefore, this appeal is dismissed with no order as to costs.

.....J. (Dr. MUKUNDKAM SHARMA)J.
(ANIL R. DAVE) New Delhi April 8, 2011