
(2011) 06 JH CK 0140
In the Jharkhand High Court
Case No : Writ Petition (S) No. 578 of 2011

Bhairab Jamuda

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-06-2011

Acts Referred:

Citation : (2011) 06 JH CK 0140

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Judgement

Narendra Nath Tiwari, J.—The Petitioner is aggrieved by order dated 4th September, 2010 (Annexure3) issued by the District Superintendent of Education, SaraikellaKharsawan, whereby the Petitioner has been put under suspension under purported provision of Rule 99 of Jharkhand Service Code and by Annexure 6, whereby article of charge has been served on the Petitioner vide Memo No. 1195 dated 9th September, 2010.

2. Learned Counsel for the Petitioner submitted that both the orders are wholly illegal and perverse. He further submitted that there was no proceeding against the Petitioner either for arrest for debt or on criminal charge nor he has ever been detained under any law, providing preventive detention. He submitted that on the date of the order, there was no criminal case against the Petitioner. But, subsequently, in order to justify the said order, a criminal case was instituted, maliciously and deliberately. The District Superintendent of Education has also initiated a departmental proceeding against the Petitioner on frivolous charges vide memo of charge dated 9th September, 2010 (Annexure6), which is also required to be quashed.

3. A counter affidavit has been filed on behalf of the Respondents, opposing the writ petition. However, there is nothing in the counter affidavit to show that any proceeding was initiated against the Petitioner on the basis of criminal charge or under any law providing preventive detention.

4. Rule 99 of the Service Code provides for suspension of an employee on certain conditions. Rule 99 runs as follows:

99. A servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is under going imprisonment, and not allowed to draw any pay and allowances (other than any subsistence grant that may be granted in accordance with principles laid down in Rule 96) for such periods, until the termination of the proceedings taken against him or until he is released from detention and allowed to rejoin his duties as the case may be. An adjustment of his allowances for such period should therefore, be made according to the circumstances of the case, the full amount being given only in the event of the Government servant being acquitted of blame or (if the proceeding taken against him, were for his arrest for debt) of its being proved that the Government servant's liability arose from circumstances beyond his control or detention, being held by any competent authority to be unjustified.

5. On bare perusal of Rule 99 of the Service Code, it is clear that a Government servant can be put under suspension only if the proceeding is taken either for his arrest for debt or on a criminal charge or he is detained under any law providing preventive detention. But admittedly, there is no such situation. The order impugned (Annexure3) is, thus, apparently illegal and perverse.

6. So far as the memo of charge is concerned, it has been submitted by learned Counsel for the Petitioner that the same is also baseless.

7. On the other hand, it has been submitted on behalf of the Respondents that whether the charge framed against the Petitioner is based on materials and evidences is a matter of enquiry and the Petitioner has been given opportunity to take all defence before the Enquiry Officer.

8. Having heard learned Counsel for the parties, I find that so far as Annexure3 is concerned, it is not supported by legal ground and the same is perverse and unsustainable. The order dated 4th September, 2010 (Annexure3) is hereby quashed.

9. So far as article of charge contained in Memo no.1195 dated 9th September, 2010 (Annexure6) is concerned, the same has been served on the Petitioner, giving opportunity to file written explanation in his defence. Enquiry Officer has been appointed to enquire into the said charge. The Petitioner has, thus, efficacious alternative remedy to defend himself against the charge before the Enquiry Officer. I, therefore, find no round to interfere with the impugned Annexure6.

10. This writ petition is, accordingly, disposed of.