
(2020) 09 JH CK 0009
In the Jharkhand High Court
Case No : Writ Petition(S) No. 5798 Of 2019

Bijoy Shankar Jha

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 02-09-2020

Acts Referred:

Bihar Financial Rules, 1950 — Rule 235, 241
Jharkhand Pension Rules, 2000 — Rule 43(b)
Constitution Of India, 1950 — Article 22

Citation : (2020) 09 JH CK 0009

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Amrita Vijay, Vandana Singh

Final Decision : Allowed

Judgement

1. Heard Miss. Amrita Vijay, the learned counsel for the petitioner and Mrs. Vandana Singh, the learned Sr. SC-III appearing for the respondent State.
2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.
3. The petitioner has preferred this writ petition for quashing the order contained in Memo No.727 dated 04.02.2019 [Annexure-6] issued by the respondent no.2 whereby the petitioner has been inflicted punishment of withholding the petitioner's three consecutive pay increment with non-cumulative effect and also punishment of censure.
4. The case of the petitioner in this writ petition is that in the year 2008 the petitioner was Junior Engineer, working in Minor Irrigation Division, Godda under Water Resources Department, Jharkhand. The respondent no.3, the DC-cum-DPC entrusted 311 MGNREGA works to respondent no.5, the Executive Engineer and

also released funds from contingency head of the MGNREGA scheme for purchase of agricultural tools and implements for distribution amongst farmers/labourers for implementation of MGNREGA works. In the financial year 2008-09, the DC-cum-DPC released contingency funds to the Executive Engineer, M.I. Division, Godda in two tranches. Subsequently, the Executive Engineer, respondent no.5 advanced a sum of Rs.1,09,890/- to the petitioner. The petitioner purchased tools and implements from the open market and distributed amongst the farmers/labourers through their beneficiary committee. The petitioner submitted their accounts to the respondent no.5 Executive Engineer through Assistant Engineer, who in his turn passed the vouchers and booked under the contingency head of MGNREGA funds from which advance had been released by the DC-cum-DPC. Thereafter the issue of Head of expenditure and violation of Rules 235 and 241 of the Bihar Finance Rule was raised by the respondent no.4 which culminated in the departmental enquiry. The enquiry report was submitted in which enquiry report rules out any financial loss or even temporary embezzlement as reflected in the enquiry report [Annexure- 2] and the impugned order of punishment has been passed.

5. The case of the respondent-State is that the petitioner has purchased agricultural tools and implements for various labour cooperation societies / committees of beneficiaries to the farmers under the scheme of MNREGA. As per the letter of National level Monitor the tools and implements are to be supplied to the labours free of cost and should be purchased through the material head but the then Executive Engineer allotted the amount to the Junior Engineers from contingency fund and there is no provision to purchase the tools and implements from the contingency fund. For the alleged irregularity in the MNREGA scheme and for the misappropriation of public fund by the petitioner during the posting at Minor Irrigation Subdivision, Godda, the Deputy Commissioner, Godda vide letter dated 21.08.2012 proposed prapatra "ka" for the departmental proceeding. Accordingly, departmental proceeding was initiated against the petitioner under the Civil Services (Classification, Control and Appeal) Rules, 1930. The enquiry officer found him guilty of two charges and so far as other charges are concerned, he has been exonerated and submitted a report. The petitioner was asked to file reply to the second show cause, the reply of the second show cause was not satisfactory. The petitioner was provided the fund in the year 2009 but he deposited the same in the year 2011 hence, a case of temporary embezzlement of money is made out against the petitioner and that is why the punishment order has been passed.

6. The learned counsel for the petitioner has assailed the impugned order on the ground that the petitioner has also deposited the amount in question, there is no question of any embezzlement, what to say about temporary embezzlement. She submitted that the funds were properly utilized for implementation of MGNREGA scheme. The respondent no.4 resorted to the pressure tactics and compelled the Junior Engineers to refund the sanctioned amount which was advanced to them by the Executive Engineer, respondent no.5. After more than a year, a

departmental proceeding was initiated against the petitioner. She submitted that the amount in question has already been deposited, thus, there is no embezzlement. The enquiry officer finally submitted the enquiry report and he found that there is no case of embezzlement, but a case of procedural mistake on the part of the petitioner may be there. She further submitted that when the enquiry officer has already exonerated the petitioner, the respondent was bound to follow the procedure prescribed in the case of "Punjab National Bank v. Kunj Bihari Mishra" reported in (1998) 7 SCC 84. She further relied in the case of "Md. Noorul Hoda v. The State of Jharkhand and Ors." [W.P.(S) No.2201 of 2019] rendered by a coordinate Bench of this Court and submitted that the case of the petitioner is fully covered in the light of the judgment of a coordinate Bench. She further relied in the case of "Satish Sharma v. The State of Jharkhand & Ors." [W.P.(S) No.2357 of 2019]. By way of referring to these two judgments, she further submitted that the case of the petitioner is fully covered in view of the coordinate Bench judgments (supra).

7. Per contra, the learned counsel for the respondent State submitted that the judgment relied by the learned counsel for the petitioner are not applicable in the facts and circumstances of the present case. She further submitted that so far these two cases of coordinate Benches are concerned, are passed on the basis of Rule 43(b) of Jharkhand Pension Rules, whereas in the present case, the petitioner is working and in that view of the matter, that judgments are not applicable in the facts and circumstances of the present case. She further submitted that there is financial embezzlement and that is why there is no illegality in the punishment order. Mrs. Vandana Singh, the learned State counsel relied in the case of "State of Meghalaya v. Mecken Singh N. Marak" reported in (2008) 7 SCC 580, at page 583. Paragraph no.14 of the said judgment is quoted hereinbelow :

14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

8. The Court has proceeded to examine the arguments advanced on behalf of the parties. The Court has perused the enquiry report wherein it is transpired that

the enquiry officer has come to the conclusion that there is no case of embezzlement of Government fund is made out against the petitioner. However, the procedural lacuna has been indicated in the enquiry report by the petitioner. The cases relied by the learned counsel for the petitioner are not applicable in the facts and circumstances of the present case as in those cases, the Hon'ble Bench has passed the order on the strength of Rule 43 (b) of the Jharkhand Pension Rules as in that case the petitioner was retired person and claiming for his pension and the said order was passed and in the present case, the petitioners are in service thus, those cases are not applicable in the facts and circumstances of the present case. So far as the case rendered in the case of "Punjab National Bank v. Kunj Bihari Mishra" (supra) is concerned that is also not applicable in the facts and circumstances of the present case and there is no complete exoneration by the enquiry officer in view of the fact other procedural part is concerned. The second show cause has also been issued to the petitioner and the petitioner has complied and after that the disciplinary authority has passed the order. It is well-settled provision of law that loss of confidence is primary factor, not the amount of money misappropriated. A temporary embezzlement is also a misconduct. Reference in this regard may be made in "Diwanj Singh v. Life Insurance Corporation of India and Ors." reported in (2015) 2 SCC 341. Paragraph no.8, 9 and 10 of the said judgment are quoted hereinbelow :

"8. As far as argument relating to quantum of punishment, as modified by the High Court, which results in consequential forfeiture of pensionary benefits in view of Rule 23, quoted above, is concerned, we do not find the punishment to be harsh or disproportionate to the guilt, in view of the nature of the charge of which the appellant is found guilty in the present case. Time and again, this Court has consistently held that in such matters no sympathy should be shown by the courts.

9. In NEKRTC v. H. Amaresh, this Court, in para 18 of the judgment has expressed the views on this point as under:

"18. In the instant case, the misappropriation of the funds by the delinquent employee was only Rs 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who misappropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment."

10. In Karnataka SRTC v. A.T. Mane⁴ in which unaccounted amount was only Rs

93 this Court expressed its opinion in para 12 as under: (SCC p. 259) "12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

9. So far as the judgment relied by the learned counsel for the respondent in the case of "State of Meghalaya v. Mecken Singh N. Marak" reported in (2008) 7 SCC 580 is concerned, the Court is in agreement that the Court generally did not interfere under Article 226 of the Constitution of India if the punishment is on the well-founded basis, but in this case two punishments have been passed, which shocks the conscience of the Court. In view of settled legal proposition that the disciplinary authority on the basis of the magnitude of the misconduct is empowered to impose the punishment appropriate to the situation. The amount has already been deposited.

10. Thus the argument of the learned counsel for the petitioner is not acceptable to the Court. The Court further finds that for such punishment, the petitioner has been punished with two punishments i.e. Withholding of three consecutive pay increments with non- cumulative effect and also of censure, which shocks the conscience of the Court and on the quantum of punishment, the writ petition succeeds and accordingly, the impugned order dated 04.02.2019 is quashed.

11. The matter is remitted back to the respondent State to pass a fresh order in the light of the observation made in this judgment.

12. The writ petition [W.P.(S) No.5798 of 2019] stands allowed to the above extent and disposed of.