

(2006) 02 JH CK 0034

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5889 of 2005

Binod Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Citation : (2006) 2 JCR 335

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Prabhask Kumar and Chittaranjan Kumar Jha, for the Appellant; P. Modi, for the Respondent

Judgement

M.Y. Eqbal, J.—This is one of the instances which will show as to how the rule of law is not being followed by the bureaucrats in the Government of Jharkhand. Petitioner, who was working on the post of Accounts Clerk was transferred from Deoghar to Dumka alongwith other persons, vide office order dated 31.12.2003. By the same order one Ajit Narayan Kheware, Accounts Clerk was transferred to Deoghar in place of the petitioner. After the petitioner was relieved from Deoghar, he submitted his joining on 1.8.2005 in the office of Building Division, Dumka. It appears that when the joining of the petitioner was not accepted by respondent No. 4, Executive Engineer, who is present in Court, higher authorities, namely, Superintending Engineer and Chief Engineer by repeated letters and reminders directed the Executive Engineer to accept his joining. When the respondent No. 4 did not obey the direction of the higher authorities, the petitioner had no option but to approach this Court by filing this writ petition.

2. This Court by order dated 1.2.2006 directed the Executive Engineer to file separate counter affidavit and state as to why he has disobeyed the direction of his higher authorities. When the counter affidavit was not filed on the next date, i.e. 17.2.2006, the matter was adjourned for today.

3. The Executive Engineer has filed counter affidavit and a show cause justifying

his action by not allowing the petitioner to join at Dumka. In the counter affidavit it is stated that petitioner submitted his joining on 1.8.2005, but his joining was not accepted because there was no vacant post in which petitioner could be adjusted. It is further stated that Establishment Committee in its meeting dated 4.11.2004 did not take any decision to transfer the said Ajit Narayan Kheware from Dumka to Deoghar.

4. The only question which falls for consideration is whether the Executive Engineer was competent not to accept the joining of the petitioner when his transfer was made by a legal and valid order passed by the competent authority. From perusal of the writ petition it appears that immediately after the order of transfer, a letter was issued by the Superintending Engineer, vide office order dated 6.8.2005 directing respondent No. 4 to immediately accept the joining of the petitioner and that Sri Khaware be relieved from Dumka. Another letter was issued by the Superintending Engineer directing the respondent No. 4 to immediately obey the transfer order passed by the competent authority. The said letter was followed by the subsequent letter also. When the respondent No. 4 was adamant in not accepting the joining of the petitioner, the Chief Engineer, Building Construction Department vide letter dated 7.9.2005 directed the Executive Engineer, respondent No. 4 to relieve Sri Khaware within three days and the joining of the petitioner be accepted on the post of Accounts Clerk. The respondent No. 4 was further directed to stop payment of salary to Sri Khaware. It appears that in spite of the aforesaid direction neither Sri Khaware was relieved nor payment of salary was stopped. It was only after this Court directed the respondent No. 4 to appear in person and file counter affidavit, he has come with a document showing that the joining of the petitioner has been accepted.

5. The aforesaid conduct of the respondent No. 4 is a clear case of insubordination and misconduct. The respondent No. 4 is, therefore, liable to be prosecuted departmentally.

6. Since the joining of the petitioner has been accepted, no further direction is to be issued so far the petitioner is concerned, but this Court directs the Chief Engineer to take action against the respondent No. 4 and pass appropriate orders in accordance with law. It is made clear that if at any time it is brought to the notice of this Court that the direction has not been complied with by the higher authorities, then appropriate order shall be passed in this regard.

7. Since because of the fault of respondent No. 4, petitioner was not paid his salary, it is directed that entire amount of salary of the petitioner shall be paid within thirty days from today.

8. Let a copy of this order be handed over to G.P. II for needful.