
(2020) 08 JH CK 0270
In the Jharkhand High Court
Case No : Writ Petition(S) No. 3163 of 2018

Bishwanath Boipai

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 27-08-2020

Acts Referred:

Civil Services (Classification, Control And Appeal) Rules, 1930 — Rule 55

Citation : (2020) 08 JH CK 0270

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Saurabh Shekhar, Kaushik Sarkhel

Final Decision : Allowed

Judgement

1. Heard, Mr. Saurabh Shekhar, learned counsel appearing for the petitioner and Mr. Kaushik Sarkhel, learned counsel 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. Petitioner has preferred this writ petition for quashing order dated 08.02.2018 contained in Annexure-7 whereby the petitioner has been punished for censure, stoppage of five increments with cumulative effect and stoppage of promotion for next five years.
4. Mr. Saurabh Shekhar, learned counsel for the petitioner submits that the petitioner has been served resolution dated 09.05.2016 (Annexure-3) whereby departmental proceeding has been initiated against the petitioner. He submits that thereafter the petitioner participated in disciplinary proceeding and after conclusion of the departmental proceeding, punishment has been imposed upon the petitioner on 08.02.2018 contained in Annexure-7 whereby three punishments have been inflicted upon the petitioner i.e. punishment of censure,

stoppage of five increments with cumulative effect and stoppage of promotion for next five years.

5. At the outset, Mr. Saurabh Shekhar, learned counsel for the petitioner submits that Annexure-3 has been issued on 09.05.2016 wherein it is stated that in view of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 initiation of departmental proceeding has been ordered. He submits that by notification dated 3rd February, 2016, Rule 1930 has been repealed and new Rule has taken place and the entire exercise has been done on the basis of repealed Rule which is without jurisdiction. He further submits that the petitioner has already suffered punishment, two years has elapsed, lost two increments, and three years promotion has been denied.

6. Pursuant to order dated 07.02.2019, whereby the State was directed to file supplementary counter-affidavit, countering the point raised by the petitioner that the petitioner has proceeded under the Rules of 1930, the respondent-State has filed supplementary counter-affidavit wherein in para 4 it has been stated that in the month of September, 2015, departmental proceeding has been initiated and that is why, the order has been passed under Rule, 1930 however date of approval of the Government of Jharkhand is 24.05.2016 and 06.05.2016 respectively. In para 5 of the supplementary counter-affidavit it has been admitted that the resolution bearing memo no. 2543 dated 09.05.2016 has been issued under the signature of the Joint Secretary, Water Resources Department, Government of Jharkhand.

7. The Court has perused Annexure-3 which is resolution dated 09.05.2016. The said resolution has been issued on the basis of Rule 55 of the Civil Services (Classification, Control and Appeal) Rule, 1930. The impugned order by which punishment has been inflicted upon the petitioner is also noted in the said order that initiation of proceeding is dated 09.05.2016. It is admitted position in view of supplementary counter-affidavit filed by the respondent-State pursuant to order of this Court that the departmental proceeding was finally took place w.e.f. 09.05.2016, submission of Mr. Kaushik Sarkhel, learned counsel for the respondent-State is not acceptable that it has been started in the month of September, 2015 in view of the fact that the said Rule, 1930 has already been repealed by Notification dated 3rd February, 2016. There is no specific date provided in the supplementary counter-affidavit as to what date in the month of September, 2015, departmental proceeding has been initiated even if assuming that the departmental proceeding was initiated in the month of September, 2015 when the said Act has been repealed by Notification dated 3rd February, 2016, it was incumbent upon the respondents to exercise the parameter in the light of new notification dated 3rd February, 2016 which has not been done in this case. In view of the fact that under the repealed notification, punishment has been inflicted upon the petitioner, impugned order cannot be sustained in the eye of law. Accordingly, the impugned order dated 08.02. 2018 is hereby quashed. The petitioner has already suffered in view of the punishment order as noted supra.

8. The writ petition stands allowed and disposed of.