
(2021) 03 JH CK 0223

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2776, 2849 Of 2017

Biswajit Gorai And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 09-03-2021

Acts Referred:

Citation : (2021) 03 JH CK 0223

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Manoj Tandon, Anil Kumar Sinha, Onkar Nath Tiwary, Shashank Saurav, Shadab Bin Haque

Final Decision : Allowed

Judgement

1. Heard Mr. Manoj Tandon, learned counsel for the petitioner and Mr. Shashank Saurav, learned counsel for the respondent-State in W.P. (S) No. 2776 of 2017 and Mr. Anil Kumar Sinha, learned Senior counsel assisted by Mr. Onkar Nath Tiwary, learned counsel for the petitioner and Mr. Shadab Bin Haque, learned counsel for the respondent-State in W.P. (S) No. 2849 of 2017.

2. The writ petitions have 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 the matters have been heard on merit.

3. In both the writ petitions, common question of law and facts are involved and that is why both the writ petitions have been heard together with the consent of the learned counsel for the parties. W.P. (S) No. 2776 of 2017

4. The petitioner has preferred this writ petition for quashing the order dated 27.04.2017, whereby, the petitioner has been terminated from service. The prayer for consequential benefits is also made in the writ petition.

5. The petitioner was initially allowed to work as Voluntary Worker in the office of

Primary Health Centre, Shikaripara, Dumka. The service of the petitioner was regularized on the post of Vaccinator w.e.f. 01.04.1988. The service of the petitioner was absorbed on the post of Clerk vide order dated 09.05.2002, contained in Annexure-2 of the writ petition. The petitioner joined on the post of Clerk on 01.07.2002. Vide letter dated 24.02.2003, a show-cause notice was issued to the petitioner as to why further action be not taken against him in light of the letter no.302 dated 10.02.2003 issued by the Deputy Commissioner, Dumka. The petitioner replied to the show- cause notice on 16.03.2003 to the Civil Surgeon-cum-Chief Medical Officer, Dumka. Pursuant to reply, the order dated 08.09.2005, contained in Annexure-5 was passed and the petitioner was allowed to continue in the service. However, the salary of the petitioner was not being paid and the petitioner moved before this Court in W.P.(S) No.6895 of 2005, which was disposed of vide order dated 10.04.2006 with direction to the respondents to consider the case of the petitioner and take a decision with regard to payment of salary. The Civil Surgeon-cum-Chief Medical Officer, Dumka has decided the case of the petitioner and direction was issued to pay salary to the petitioner vide order dated 09.06.2006, contained in Annexure-7 of the writ petition. The petitioner was granted 2 nd M.A.C.P. on completion of 20 years of satisfactory service w.e.f. 28.02.2012 vide order dated 31.01.2014. Vide order dated 03.03.2017, the Additional Chief Medical Officer directed the petitioner to bring entire records relating to his service. The petitioner submitted his reply on 07.03.2017. The impugned order dated 27.04.2017 has been passed by the Civil Surgeon-cum-Chief Medical Officer, Dumka, whereby, the service of the petitioner has been terminated. Aggrieved with this order, the petitioner has preferred the present writ petition.

W.P. (S) No. 2849 of 2017

6. The petitioner has preferred this writ petition for quashing the order dated 26.04.2017, whereby, the petitioner has been terminated from service. The order dated 06.05.2017 issued by the Civil Surgeon-cum-Chief Medical Officer is also under challenge. The prayer for consequential benefits is also made in the writ petition.

7. The petitioner was appointed on the post of Clerk in the Health Department at the district of Dumka in the year 1990. On the charges of alleged irregular appointment, the Department of Health issued show-cause to 198 employees including the petitioner. The services of the petitioner and other 6 employees were terminated vide order dated 25.08.1998. The Regional Deputy Director, Health Services, Santhal Pargana Division, Dumka requested the Commissioner-cum- Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar to review and to pass proper order regarding the said order dated 25.08.1998. The Regional Deputy Director, Health Services, Santhal Pargana Division, Dumka passed an order dated 01.03.2002 in which the petitioner and one other employee was allowed to join his duty and directed for payment of salary. The petitioner was transferred from Additional DHC Baskulli

(Rameshwar) to the post of Clerk at Additional DHC Makra of Sadar Block Dwarka vide letter dated 15.12.2003. After joining of the petitioner at Additional DHC Makra, the Civil Surgeon-cum-Chief Medical Officer, Dumka vide letter dated 14.02.2004 issued direction regarding no work should be taken by the petitioner and non-payment of salary of the petitioner. The petitioner moved before this Court against that order in W.P.(S) No. 1711 of 2004 and pursuant to the interim order passed in that writ petition, the petitioner was allowed to join and salary was started. An F.I.R. was lodged against the petitioner on the charge of unauthorized presence on duty and forcibly put mark attendance on official register. In the Criminal Appeal No. 2/2014, the petitioner was acquitted from the said charge vide order dated 30.04.2015. Vide order dated 29.06.2007, the petitioner was transferred from the district of Dumka to the district of Deoghar. The petitioner was granted the benefit of 2nd MA.C.P. Vide order dated 30.10.2012. The service of the petitioner was confirmed by the Civil Surgeon-cum-Chief Medical Officer, Deoghar vide order dated 05.05.2010. The Enquiry Committee was constituted for verifying the appointment of various persons. Pursuant to the order passed by this Court in W.P.(S) No. 2414 of 2009 with W.P. (S) No.2415 of 2009, 3 Men Committee was constituted and 3 Men Committee submitted a report, thereafter, the service of the petitioner has been terminated vide order dated 26.04.2017. Aggrieved with this order, the petitioner has preferred the present writ petition.

8. On these backgrounds, Mr. Manoj Tandon, learned counsel for the petitioner in W.P. (S) No. 2776 of 2017 challenged the impugned order dated 27.04.2017 on the ground that without following the principles of natural justice, the impugned order has been passed. He submits that the petitioner has rendered 27 years of service and without following the rule, the service of the petitioner has been terminated. He further submits that the appointment letter is on the record at Annexure-1, wherein, along with the petitioner 11 other persons were appointed. The petitioner's service has been absorbed vide order dated 09.05.2002, contained in Annexure-2. He also submits that by way of Annexure-3, the petitioner was asked to give reply to the show-cause and by way of Annexure-4, the petitioner submitted his reply. He further submits that the said reply was found to be satisfactory and that is why the petitioner was allowed to discharge the work vide order dated 08.09.2005, contained in Annexure-5. Thereafter, the salary of the petitioner was stopped and pursuant to the order passed in W.P.(S) No. 6895 of 2005, the salary of the petitioner was released vide order dated 09.06.2006, contained in Annexure-7. He also submits that the petitioner was granted the benefit of 2nd M.A.C.P. vide order dated 31.01.2014. He further submits that vide order dated 03.03.2017 on the extent of letter dated 15.01.2003, the petitioner was again asked to give reply about his appointment and the petitioner provided the entire material with regard to his appointment by letter dated 07.03.2017, contained in Annexure-10. He further submits that on the extent of order no.74 dated 26.04.2017 issued by the Additional Chief Secretary, Health, Medical Education and Family Welfare Department,

Government of Jharkhand, the petitioner's service has been terminated vide order dated 27.04.2017. He further submits that without following the due process of law and without following the rule with regard to the Government employees, namely, Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016, the impugned order has been passed. He also submits that the petitioner has already rendered 27 years of service and without providing the document and without providing opportunity of hearing to the petitioner, the impugned order has been passed that too on the extent of an order passed by the High Court in which the petitioner was not the party. He also submits that if the order of the High Court was there, the petitioner was required to be noticed and after providing full opportunity of hearing, any order can be passed, which has not been done in the case of the petitioner. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of *Buddhi Nath Chaudhary and others v. Abahi Kumar and Others*, reported in (2001) 3 SCC 328.

9. Paragraph 6 of the said judgment is quoted herein below:

"6. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in *Ram Sarup v. State of Haryana*; *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* and *H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court, Bangalore*. Therefore, we must let the matters lie where they are."

10. Mr. Manoj Tandon, learned counsel for the petitioner further relied upon the judgment rendered by the Hon'ble Supreme Court in the case of *Punjab State Electricity Board and Others v. Leela Singh*, reported in (2007) 12 SCC 146.

11. Paragraph 5 of the said judgment is quoted herein below:

"5. The charge against the respondent is that he has committed fraud in obtaining the appointment by production of a forged experience certificate. The said charge, in our considered opinion, was required to be proved in a duly

constituted departmental proceeding. The services of the appellant could not have been directed to be terminated relying on and/or on the basis of the decision of the Board in the case of another employee."

12. On the other hand, Mr. Shashank Saurav, learned counsel for the respondent-State in W.P.(S) No. 2776 of 2017 tried to justify the impugned order and submits that the petitioner's appointment was found to be forged. He further submits that 3 Men Committee was constituted to enquire into the matter and 3 Men Committee has come to the conclusion that the petitioner along with one Arun Kumar Chaudhary [petitioner in W.P.(S) No. 2849 of 2017] appointment fraudulently and that is why the impugned order dated 27.04.2017 has been passed. He further submits that this was done in pursuance of the order passed by this Court in W.P.(S) No.2414 of 2009 and W.P.(S) No.2415 of 2009.

13. Mr. Anil Kumar Sinha, learned Senior counsel appearing for the petitioner in W.P.(S) No. 2849 of 2017 submits that the petitioner's appointment was valid as Annexure-1 is already there, which is the appointment letter. He further submits that earlier one another enquiry was made wherein the case of the petitioner was found to be true. He also submits that enquiry was conducted in pursuance to the direction dated 24.01.2013 issued by the order of the Principal Secretary, Health Medical Education and Family Welfare Department, Government of Jharkhand. He further submits that pursuant to that order, the order dated 21.05.2014, contained in Annexure-20 to the rejoinder has been passed, whereby, the case of the petitioner has been found to be true, which was approved and thereafter the petitioner has been granted the benefits of M.A.C.P. He also submits that 3 Men Committee has submitted a report on the basis of the direction issued by this Court in W.P.(S) No.2414 of 2009 with W.P.(S) No.2415 of 2009, wherein the petitioner was not the party. He further submits that without following the principles of natural justice, the career of the petitioner has been brought to an end, which is against the mandate of law. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of UCO Bank & Ors. v. Rajendra Shankar Shukla , reported in 2018 4 Supreme 257.

14. Paragraphs 12 and 13 of the said judgment are quoted herein below:

"12. We do not find any reason to interfere with the judgment and order passed by the High Court. However, it is necessary for us to highlight a few facts which were brought to our notice during the course of submissions made by learned counsel. The first issue of concern is the enormous delay of about 7 years in issuing a charge sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and unacceptable. On this ground itself, the charge sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance.

13. What compounds the default on the part of the Bank is that Shukla was

placed in a higher category as a Manager on 19th July, 1994 while all these discussions were going on in the Bank. He was also allowed to cross the efficiency bar on 12th August, 1996 again while the discussions were going on. Surely, if the Bank was serious about proceeding against Shukla for misconduct, they would not only have taken prompt action in issuing a charge sheet but would not have granted him the benefit of being placed in a higher category or crossing the efficiency bar."

15. Mr. Shadab Bin Haque, learned counsel for the respondent-State in W.P.(S) No. 2849 of 2017 draws attention of the Court to the 3 Men Committee and submits that the Enquiry Committee has given clear cut finding about the illegal appointment of the petitioner. He further submits that the appointing authority has also denied about genuineness of the said letter and that is why the impugned order has been passed. He further submits that in pursuance of the order passed by this Court in W.P.(S) No.2414 of 2009 with W.P.(S) No.2415 of 2009, the service of the petitioner has been terminated, which has been later on appreciated by the Court, contained in Annexure-A of the counter affidavit. To justify the action of the respondents, he refers to paragraph 9 of the Enquiry Committee's report.

16. In view of the aforesaid facts and considering the submission of the learned counsel for the parties, the Court has ventured to go through the materials on the record. By the order dated 02.03.1989, 12 persons have been appointed, whereby, the petitioner namely Biswajit Gorai was also appointed. One Santosh Kumar Dey in the said order was terminated from the service, who moved before this Court. Pursuant to the order of the Court, the service of the said Santosh Kumar Dey has been reinstated by the respondent-State. The rest of the persons disclosed in Annexure-1 dated 02.03.1989, except the petitioner, are still working. If the appointment of the petitioner is found to be forged one, the rest of the persons are also said to be appointed fraudulently. However, the service of the petitioner has only been terminated. The petitioner's service has been regularized vide order dated 02.03.1989. How the authority concerned has come to the conclusion that the petitioner's service has been found to be forged. No reason has been assigned in the impugned order. The petitioner's service has been terminated without following the due process of law. The petitioner has already rendered 27 years of service and he was also provided the benefit of M.A.C.P. and his service book was opened and the High Court in W.P.(S) No.2414 of 2009 with W.P.(S) No.2415 of 2009 has not directed to end the service of the petitioner without following the due process of law that too when the petitioner was not the party in those writ petitions. Admittedly, in the case in hand, no show-cause has been issued to the petitioner for termination of service. The departmental enquiry has not been made and the petitioner was not provided the opportunity of hearing and without following the due process of law, the impugned order has been passed in the case of Arun Kumar Chaudhary [petitioner in W.P.(S) No. 2849 of 2017] and pursuant to the direction of the Principal Secretary, Health Medical Education and Family Welfare Department,

Government of Jharkhand, Ranchi, enquiry was conducted which has been brought on record by way of rejoinder to the counter affidavit and pursuant thereto the service of the petitioner was found to be true and the benefit of M.A.C.P. was provided to the petitioner. Without taking notice of the earlier enquiry that too pursuant to the direction of the Secretary of the concerned department, the 3 Men Committee has come to that conclusion. The earlier enquiry has not been considered by the 3 Men Committee. On the extent of which, the interim order was passed by the High Court, the petitioner was not the party-respondent in those writ petitions. The departmental proceeding has not been initiated against the petitioner and without following the due process of law and Jharkhand Government Servants (Classification, Control & Appeal) Rules, 2016, the impugned order has been passed. The petitioner has already rendered 27 years of service. Even assuming that the petitioner's services were not on the basis of the said parameters, the principles of natural justice was required to be followed.

The serious charge like forgery is required to be proved by way of framing the specific charge in this regard and for that strict adherence is essential by way of leading the evidence of both the sides. In the case of Union of India and Others v. Gyan Chand Chattar, reported in (2009) 12 SCC 78, the Hon'ble Supreme Court has held that the serious charge like bribery should be specific, definite and detailed and strict adherence to statutory principles and natural justice are essential in that case. The case in hand is identical. The petitioners' services have been terminated on the ground of forged documents, which was required to be proved by way of framing specific charge in this regard and strict adherence to the principles of natural justice are essential, which has not been done in the case in hand. The 3 Men Committee's report is also found to be interim enquiry and on the basis of interim enquiry, the petitioners' services have been terminated. Paragraphs 21 and 31 of the judgment rendered by the Hon'ble Supreme Court in the case of Union of India and Others v. Gyan Chand Chattar, reported in (2009) 12 SCC 78 are quoted herein below:

"21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities.

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31. In Municipal Committee, Bahadurgarh v. Krishnan Behari this Court held as under: (SCC p. 715, para 4) "4....In a case of such nature--indeed, in cases involving corruption--there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant." Similar view has been reiterated by this Court

in Ruston & Hornsby (I) Ltd. v. T.B. Kadam, U.P. SRTC v. Basudeo Chaudhary, Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd. v. Sahakari Noukarara Sangha, Karnataka SRTC v. B.S. Hullikatti, Rajasthan SRTC v. Ghanshyam Sharma, NEKRTC v. H. Amaresh and U.P. SRTC v. Vinod Kumar, wherein it has been held that the punishment should always be proportionate to gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal from service. Therefore, the charge of corruption must always be dealt with keeping in mind that it has both civil and criminal consequences."

17. As a cumulative effect of the aforesaid discussions, the impugned orders cannot sustain in the eyes of law. Accordingly, the impugned order dated 27.04.2017, contained in Annexure-11 of the W.P.(S) No.2776 of 2017 and the impugned order dated 26.04.2017, contained in Annexure-14 of W.P.(S) No. 2849 of 2017 are quashed with direction to the respondents to reinstate the service of the petitioners with all consequential benefits. The respondent-State, if think and proper and come to the conclusion that there is requirement of enquiry into the matter, they may do so afresh, in accordance with law.

18. With the above observations and directions, the writ petitions stand allowed and disposed of.