(2023) 02 CHH CK 0014

In the Chhattisgarh High Court

Case No : Writ Appeal No. 185 Of 2022

Chakrdhar Singh APPELLANT

Vs

S.E.C.L. Through Managing Director RESPONDENT

Date of Decision : 09-02-2023

Acts Referred:
Chhattisgarh Land Revenue Code, 1959 — Section 165(6)

Citation : (2023) 02 CHH CK 0014

Hon'ble Judges : Arup Kumar Goswami, CJ;Arvind Singh Chandel, J

Bench : Division Bench

Advocate : Renu Kochar, H.B. Agrawal, Swati Agrawal

Final Decision : Allowed

Judgement

Arvind Singh Chandel, J

1. The instant writ appeal has been preferred by the petitioner being aggrieved by the order dated 22.3.2022 passed by a learned Single Judge of this Court in Writ Petition (S) No.1898 of 2022, whereby the learned Single Judge, while disposing of the writ petition, directed the respondents to proceed with the departmental inquiry pending against the petitioner/appellant.

2. As per the petitioner/appellant, the respondents/authorities had acquired some land for Kusmunda Project. According to the rules and regulations formulated by the respondents/authorities for giving employment to the displaced land owners, the owners of the land could also nominate other persons on their behalf for obtaining employment pursuant to acquisition of their land. One Ashok Kumar Singh, whose land was acquired, nominated the appellant's name for providing him employment under the Kusmunda Project. He also gave an affidavit/consent letter to the respondents in this regard. After verifying the fact from the revenue officers, the appellant was appointed as a Majdoor Category-I in Gevra Project vide order dated 9.2.1990. Later on, a complaint was made on 14.5.2016 by one Kusum Soni against the appellant before respondent

No.2 alleging therein that the appellant had obtained employment on the basis of forged documents. On the basis of the said complaint, a charge-sheet was issued to the appellant on 16.3.2017. The appellant gave his reply to the charge-sheet on 20.3.2017 denying the allegations made against him. On 27.7.2021, Anju Singh, widow of Ashok Kumar Singh also gave an affidavit in support of the appellant. A separate inquiry was conducted by the Tahsildar under Section 165(6) of the Chhattisgarh Land Revenue Code, 1959 (henceforth 'the LR Code') on the complaint of Kusum Soni. The Tahsildar submitted his report on 27.11.2020. The respondents/authorities, being dissatisfied with the reply of the appellant, issued order dated 8.3.2022, whereby an inquiry officer was appointed. The above order dated 8.3.2022 and the charge-sheet earlier issued to the appellant was challenged before the learned Single Judge on the ground that at the time of issuance of charge-sheet, no list of documents, list of witnesses and articles of charges were provided to the appellant and, therefore, there was non-compliance of the principles of natural justice. It was further contended that after filing of the reply to the charge-sheet, the respondents/ authorities kept the further proceedings of the departmental inquiry in abeyance for 5 years and suddenly, just 2 months before superannuation of the appellant, the respondents/authorities, vide order dated 8.3.2022, again started further proceedings of the departmental inquiry and appointed the inquiry officer, which is not permissible.

3. The learned Single Judge disposed of the writ petition with the following observations:

"6. Given the said submission by the counsel for the parties, this court is of the opinion that since it is only at the disciplinary stage, it would not be proper and justified for this court to interfere with the disciplinary proceedings initiated by the respondents at this juncture. However, the respondents are directed to ensure that they should proceed further the departmental enquiry only in due compliance of the principles of natural justice, inasmuch as the petitioner should be given a fair and reasonable opportunity of hearing. The petitioner should also be made available with all relevant records and list of witnesses which the respondents would be relying upon in the course of departmental enquiry before proceeding further with the departmental enquiry. It is further directed that considering the fact that the petitioner is reaching the age of superannuation in April, 2022, the respondents are directed to ensure that the departmental enquiry is concluded as expeditiously as possible preferably before the petitioner crosses the age of superannuation. The petitioner, in turn, is also directed to render all necessary co-operation for the early conclusion of the departmental enquiry."

4. Thus, the instant writ appeal has been preferred by the petitioner/appellant.

5. It was submitted by learned counsel appearing for the petitioner/appellant that as at the time of issuance of charge-sheet, the appellant was not provided the list of documents, list of witnesses and articles of charges, the appellant was

not aware of the allegations levelled against him. The charge-sheet was issued only on the basis of a complaint made by Kusum Soni. After submission of the appellant's reply, the respondents/authorities did not proceed further and the proceedings were kept in abeyance for 5 years. Despite that, the learned Single Judge passed the impugned order. By holding that the documents will be supplied at the time of inquiry, the learned Single Judge committed grave error in law and covered the lacuna on the part of the respondents/authorities. It was further argued that at the time of issuance of charge-sheet, no single evidence was available to prove the charges levelled against the appellant and, therefore also, the impugned order passed by the learned Single Judge is not sustainable.

6. Learned senior counsel appearing for the respondents opposed the arguments raised on behalf of the appellant. It was submitted by the learned senior counsel that on the basis of the material placed on record, the learned Single Judge has rightly disposed of the writ petition. There is no manifest error or illegality in the impugned order. Thus, the instant appeal is liable to be dismissed.

7. We have heard the arguments advanced on behalf of the parties and perused the entire material available on the records of the writ petition and the writ appeal.

8. Undisputedly, the petitioner/appellant was appointed in the year 1990. It is also not in dispute that one Kusum Soni made a complaint against the appellant on 14.5.2016. It is also not in dispute that on the basis of the said complaint, a charge-sheet was issued to the appellant on 16.3.2017 and reply to the said charge-sheet was filed by the appellant on 20.3.2017. Thereafter, no further proceeding was conducted in the departmental inquiry and after passing of 5 years, vide order dated 8.3.2022, an inquiry officer is appointed and the departmental inquiry is proceeded further. It is also admitted by the respondents that at the time of issuance of charge-sheet, no list of documents, list of witnesses and articles of charges were supplied to the appellant. The respondents also failed to submit any document to show that at the time of issuance of charge-sheet, i.e., in the year 2017, such type of documents were prepared and annexed with the charge-sheet.

9. From perusal of the record of the writ petition, we have seen that the writ petition was filed on 11.3.2022 and the matter was for the first time listed before the learned Single Judge on 22.3.2022 and on that very day the learned Single Judge has passed the impugned order. We have also seen that no return or counter affidavit is filed by the respondents in the writ petition. In the instant appeal, return and additional return to the appeal have been filed by the respondents. In their return and additional return, it is stated by the respondents that as the complaint dated 14.5.2016 made by Kusum Soni was separately inquired by the Tahsildar and the inquiry was pending before the Tahsildar, the respondents/authorities were awaiting for the report of the said inquiry and after receiving the inquiry report, the inquiry officer in the departmental inquiry was appointed vide order dated 8.3.2022.

10. On the basis of the complaint made by Kusum Soni, the Tahsildar made his inquiry under the provisions of Section 165(6) of the LR Code. There is nothing on record to show that the matter was referred by the respondents to the Tahsildar or Sub-Divisional Officer for an inquiry into the complaint made by Kusum Soni. Therefore, after issuance of the charge-sheet in the year 2017, there was no occasion for the respondents/authorities to wait for the inquiry report from the Tahsildar. From perusal of the charge-sheet, it also appears that there is no mention of the fact therein that on the complaint made by Kusum Soni any inquiry was pending before the Tahsildar.

11. The nomination form (Annexure P2) annexed with the writ petition shows that the land which was acquired for Kusmunda Project was bearing Khasra No.284/2 and 584/1. The report dated 27.11.2020 given by the Naib-Tahsildar shows that the inquiry was conducted with regard to land bearing Khasra No.579/1 admeasuring 0.05 dismil, which was purchased by the petitioner/ appellant in the year 1996 in the name of his minor son. As per the report dated 27.11.2020, it was found that the petitioner/appellant, who belongs to Rajput caste, showing himself to be of Kanwar caste (tribal), purchased the said land bearing Khasra No.579/1 and thereby the petitioner/appellant committed fraud. Even if it is so, this has no relevancy with the land acquired by the respondents/ authorities because the land which was acquired in the year 1988 was bearing Khasra No.284/2 and 584/1 and the land which was alleged to be purchased by the petitioner/appellant fraudulently in the year 1996 was bearing Khasra No.579/1. Even if the petitioner/appellant purchased the said land fraudulently, this land has not been acquired by the respondents/authorities and the petitioner/ appellant has not got the job in lieu of acquisition of the said land.

12. The nomination form (Annexure P2) as well as the affidavit sworn by Ashok Kumar Singh and the affidavit sworn by his widow Anju Singh show that Ashok Kumar Singh was real brother of the petitioner/appellant. The respondents/ authorities have not placed on record anything to show that for seeking the job the person to be nominated was to be dependent on the land owner. Therefore, the name of the petitioner/appellant was proposed by Ashok Kumar Singh for the job in lieu of acquisition of their land. Looking to the above, it is clear that at the time of issuance of charge-sheet on 16.3.2017, there was no material available with the authorities to show that the petitioner/appellant committed any fraud and obtained the job on the basis of forged documents. Admittedly, list of documents, list of witnesses and articles of charges were not supplied to the appellant at the time of issuance of charge-sheet.

13. For the reasons discussed above, we are of the view that on the basis of charge-sheet issued in the year 2017, now when 5 years thereafter have been passed and when the appellant has retired from service, continuing any further proceeding against the petitioner/appellant in the aforesaid departmental inquiry would be miscarriage of justice. Accordingly, the impugned order dated 22.3.2022 passed by the learned Single Judge deserves to be and is hereby set

aside and the instant writ appeal is allowed. The respondents/authorities are directed to close the departmental proceedings pending against the petitioner/ appellant pursuant to the charge-sheet issued in the year 2017.

