
(2003) 12 JH CK 0069
In the Jharkhand High Court
Case No : CWJC No. 8855 of 2000 (P)

Chintamani Devi	Vs	APPELLANT
State of Bihar (now Jharkhand) and Others		RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2004) 1 JCR 372

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Satish Kumar Ughal and Prabhash Kumar, for the Appellant; Pradip Modi, GPI, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—Heard Mr. S.K. Ughal, learned counsel for the petitioner and Mr. Pradip Modi, learned Government Pleader No. 1 for the State of Jharkhand-respondents.

2. The petitioner, in the instant case, has prayed for quashing the resolution dated 15.5.1999 by which the punishment of dismissal from service and recovery of Rs. 48,781.44 paise was inflicted upon the husband of the petitioner. The petitioner has also made a prayer for quashing the enquiry report as against the concerned employee by which the enquiry officer had found the charges levelled against the husband of the petitioner to be proved. Consequently the petitioner also makes a prayer for quashing the entire departmental proceedings.

3. It is not necessary to go into the details of the facts save and except to take notice of the fact that the petitioner's husband was proceeded against for the following charges :

- (a) Proceeding on unauthorised leave.
- (b) Making appointment of daily wagers without any authority.

(c) Misappropriating a sum of Rs. 20,336.60 paise.

(d) Dereliction of duty.

(e) Gross negligence.

(f) Giving wrong information to the Controlling Officer.

(g) Frequently misappropriating a sum of Rs. 28,445.48 paise against 154.595 quintals of wheat.

4. The enquiry officer found all the charges proved against the petitioner's husband. The aforesaid enquiry report was submitted on 17.11.1994 by Annexure 5. Thereafter on 29.12.1994, the Additional Secretary of the Government issued a second show cause notice upon the petitioner's husband asking him to show cause against the proposed punishment. It was intimated in the said show cause notice that the Government was considering the matter in relation to removing him from service. It appears that thereafter the petitioner's husband filed CWJC No. 2350 of 1995 before the Patna High Court and by order dated 24.8.1995, the writ petition was dismissed as withdrawn vide Annexure 8. To that extent, therefore, the second show cause notice dated 29.12.1994 as contained in Annexure 7 was not interfered with by the High Court.

5. Mr. S.K. Ughal, learned counsel for the petitioner submits that after the aforementioned second show cause notice had been served upon him, the Deputy Secretary issued another notice to him to show cause as to why the punishment relating to recovery of the sum of Rs. 48,672/- should not be imposed upon him together with censure and withholding of annual increments. This letter is dated 17.2.1998 as contained in Annexure 9 to this writ petition. On 10.3.1998, the petitioner's husband submitted his explanation by Annexure 10 and finally on 15.5.1999 by Annexure 1, the Government passed the impugned order removing the petitioner's husband from service.

6. Mr. S.K. Ugal, learned counsel for the petitioner submitted that the second show cause notice did not contemplate removal from service as the proposed punishment was limited to the extent of recovery, censure and withholding of some increments and therefore, the final order removing the petitioner's husband from service was apparently illegal. The aforementioned argument of Mr. Ughal cannot be said to be tenable in view of the fact that the relevant Article, namely, Article 311 of the Constitution of India relied upon by the learned counsel did away with the requirement of the second show cause notice when the preceding procedural formalities were regular. In this context, the statement of the petitioner at paragraph 21 is relevant to be taken note of. It, inter alia, states that the enquiry was held on various dates in which the petitioner participated. Even otherwise, there is nothing on the record which can suggest that the enquiry was illegal, unfair or irrational. Moreover the first show cause notice that was served upon the petitioner's husband dated 21.12.1994 (Annexure 7) was not interfered with by the High Court in CWJC No. 2350 of

1995 (Annexure 8 dated 24.8.1995). In that view of the matter, the said show cause notice clearly indicates that the matter relating to consideration by the Government insofar as removal from service is concerned was kept alive. Additionally, the findings are that the petitioner is responsible for causing loss to the Government and, therefore, the other show cause notice cannot be said that it finally concluded the entire matter. Moreover, Article 311 of the Constitution of India reads as under :

"311. Dismissal, removal or deduction in rank of persons employed in civil capacities under the Union or a State :--

(1) No person who is a member of a civil service of the Union or an All India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed;

Provided further that this clause shall not apply--

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

7. Upon perusal of the aforementioned provision, it is apparent that no person shall be dismissed or removed unless there is an enquiry in which he has been informed of the charge against him and given a reasonable opportunity of being heard in respect of those charges. The first proviso makes it clear that even after enquiry if such penalty is to be imposed, then the same may be done so on the basis of the evidence adduced during an enquiry, and it shall not be necessary to give such, a person any such opportunity for making representation, of the

penalty proposed to be imposed. The enquiry report as also the statement made in Paragraph 21 of the writ petition is suggestive of the fact that the petitioner was given full opportunity where evidences were looked into and Ultimately all the charges levelled against the petitioner were found to be established. Even if other show cause notice was issued i.e. one dated 17.2.1998 as contained in Annexure 9 that by itself cannot create a ground for the petitioner to state that the order which has been passed is illegal. In fact, Mr. Pradip Modi, learned Government Pleader No. 1 has submitted that in view of the provisions of Article 311 of the Constitution of India, there was no need for the Deputy Secretary to once again issue the other show cause notice dated 17.2.1998. Mr. Modi's submissions are acceptable to the Court for the reasons stated above.

8. Moreover, taking into consideration the gravity of the offence alleged against the petitioner together with the findings of the Enquiry Officer, this Court holds that the order of punishment is neither shockingly disproportionate nor illegal and, therefore, the scope of judicial review is also limited to a great extent. Reference for the aforementioned proposition may be had from the judgment of the Supreme Court in the case of Mithilesh Singh Vs. Union of India (UOI) and Others, Paras 9 and 10 thereof. Consequently, this Court is not inclined to interfere with the order of punishment.

9. This writ petition is accordingly dismissed. No order as to costs.