
(2017) 05 JH CK 0037
In the Jharkhand High Court
Case No : 2856 of 2017

Doman Sao

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 25-05-2017

Acts Referred:

Citation : (2017) 05 JH CK 0037

Hon'ble Judges : Dr. S.N.Pathak

Bench : SINGLE BENCH

Advocate : Mahesh Tewari, K.M.Verma

Judgement

1. Heard the parties.
2. Mr. Mahesh Tewari, learned Counsel, appears on behalf of petitioner and Mr. K.M.Verma, G.P.-I appears on behalf of the State.
3. It is the case of the petitioner that earlier charges were levelled against the petitioner. Charge-sheet was issued and the petitioner was suspended that was the matter of challenge before this Hon''ble Court and this Hon''ble Court vide order dated 09.09.2014 (Annexure-1) passed an order to take decision on the representation of the petitioner expeditiously and preferably within a period of eight weeks from the date of order which was not complied this gave rise to cause of action for the petitioner and he preferred one Contempt Application i.e. Contempt Case (Civil) No. 698/2014.
4. On notice, the respondents appeared in the Contempt Application and gave an undertaking that they have already filed a show cause and it is stated in paragraph No.6 thereof that the order of suspension of the applicant is kept in abeyance and it will not be given effect to and in pursuance of the order, passed by this Court dated 7th September, 2011 in W.P.(S)No.19/2011.
5. Learned Counsel for the petitioner Mr. Mahesh Tewari draws the attention of the Court towards Annexure-4 page 33 in which it was observed by this Hon''ble

Court that looking to para-13 of the counter-affidavit filed by the respondents it appears that the respondent-State is not going to proceed further during the pendency of W.P.(S)No.19 of 2011 so far as Annexure-1 annexed to this contempt petition is concerned.

6. The present writ petition has been filed with a prayer for recalling the order of suspension by the respondent No.2 in compliance of the order of this Hon''ble Court. One I.A.No.4462/2017 has been filed in which the order of suspension dated 23.05.2017 is under challenge. Going through the order dated 23.05.2017 it appears that order has been issued based on the same charges though the earlier charge-sheet has not been annexed in the writ application or in the I.A.

7. Learned Counsel draws the attention of the Court towards paragraph No. 6 and 7 of the I.A. and submits that said charge-sheet has not been brought on record but in paragraph No. 6 & 7 the same has been referred to.

8. Having gone through paragraph No.6 & 7 of the I.A. and the order dated 23.05.2017 this Court is of the view that charges are same and similar. Learned Counsel submits that in view of the fact that on the same charges the petitioner was suspended and proceeded earlier. When the Court was approached, the respondents dropped those charges and the proceeding also.

9. Mr. K.M. Verma, G.P.-I appears on behalf of the respondents and vehemently opposes the prayer but submits that if the charges are same and similar, initiation of any proceeding is not tenable in the eyes of law as on the same charges the petitioner was proceeded earlier.

10. In view of the fair submission of the learned Counsel for the respondents, this Court is of the view that the order dated 23.05.2017 is not tenable in the eyes of law. In service jurisprudence there is no procedure for initiating fresh proceeding on the same and similar charges on which the petitioner was earlier proceeded and it was dropped by the order of the Court.

11. In view of the legal propositions, service rules the order dated 23.05.2017 is stayed. There shall be no further proceeding. The State is directed to file counter-affidavit.

12. It is made clear that if the charges are same and similar, the respondent will not proceed further but if the charges are not same, the respondents are free to take action in accordance with law for initiation of any proceeding.

13. I.A.No. 4462/2017 stands disposed of.

14. Let this writ petition be listed after four weeks from the date of receipt of the counter-affidavit.