
(2016) 06 JH CK 0035
In the Jharkhand High Court
Case No : W.P. (S) No. 5118 of 2011

Ganga Prasad Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 22-06-2016

Acts Referred:

Citation : (2017) 1 AIRJharR 222 : (2017) 1 JBCJ 67 : (2016) 4 JCR 753 :
(2016) 3 JLJR 559 : (2016) 3 LLJ 382

Hon'ble Judges : Mr. Pramath Patnaik, J.

Bench : Single Bench

Advocate : Vijay Shankar Jha, Advocate, for the Appellant; L.C.N. Sahdeo, G.P. IV and Ms. Jyoti Nayan, J.C. to G.P. IV, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Pramath Patnaik, J.—In the instant writ application, the petitioner has inter alia, prayed for quashing of the order dated 21.11.2009, issued by the Respondent No. 3 pertaining to the punishment of imposition of fine of Rs. 5,000/- to be realised from the salary of the petitioner in two months and direction that the petitioner will not be entitled to any financial benefit for the intervening period i.e. the date of compulsory retirement till the date of reinstatement in service and for quashing the order dated 18.03.2011, issued by the respondent no. 2 affirming the order of punishment, passed by the disciplinary authority vide Annexure-4 and for direction to the respondents to pay the financial benefits including arrears of wages/salary for the intervening period i.e. 24.04.2001 to 24.09.2007 i.e. the date of compulsory retirement along-with the interest.

2. The brief facts, as disclosed in the writ application, is that the petitioner initially joined the service of Bihar Rajva Road Transport Corporation, Jamshedpur Division of Chaibasa Depot as Conductor in the year 1971. While being posted on Agrico Depot under Jamshedpur Division, on 28.03.2004, the petitioner was on duty in Bus No. JH 05E 6374, Tata Bhabhua service which was

checked by the flying squad and it was found that out of J2 passengers, six did not book the tickets nor any fare was realised from the said six passengers. The petitioner was out off duty from service by office order dated 31.03.2004 issued by the Divisional Manager of the Corporation. Thereafter, vide memo dated 22.05.2004, order of compulsory retirement of the petitioner was passed with immediate effect under Section 74 (b) (ii) of the Bihar Service Code. The petitioner preferred appeal/representation dated 11.06.2004 and 25.07.2007 against the aforesaid order of compulsory retirement of the petitioner, requesting for rejection of the said order and for reinstatement in service. The respondents after considering the representations/appeals filed by the petitioner reconsidered the order of compulsory" retirement and vide order dated 21.09.2007, took a decision to reinstate the petitioner in service with immediate effect by revoking the order of compulsory retirement. In compliance of the order dated 21.09.2007, the petitioner joined the services on 24.09.2007 before the concerned authorities, which was duly accepted. Thereafter, the respondents initiated departmental proceeding against the petitioner and the charge was issued to the petitioner on 30.01.2008 and the petitioner submitted his reply to the charge on 26.02.2008. Thereafter, the matter was enquired into and the enquiry officer submitted his report exonerating the petitioner from the charge/ allegations as evident from the enquiry report at Annexure-9 to the writ petition. The Divisional Manager of the Respondents-Corporation, i.e. Respondent No. 3 without considering the findings of the enquiry report, passed the impugned order dated 21.11.2009 imposing a fine of Rs. 5,000/- to be realised from the salary of the petitioner in two months and also passed order that the petitioner will not be entitled for any financial benefit for the intervening period i.e. the date of compulsory retirement till the date of entry in service as is evident from Annexure-10 to the writ petition. The petitioner filed an appeal dated 25.01.2010 before the Secretary, Transport Department, Government of Jharkhand, Ranchi against the order of punishment, dated 21.11.2009 and the appellate authority (respondent no. 2) has been pleased to dismiss the appeal by a single line order dated 18.03.2011 vide Annexure-12 to the writ petition.

3. Heard Mr. Vijay Shankar Jha, learned counsel for the petitioner and Mr. L.C.N. Sahdeo-G.P. IV, learned counsel for the respondents.

4. Mr. Vijay Shankar Jha, learned counsel for the petitioner has strenuously urged before this Court that notwithstanding the exoneration of the charges by the enquiry officer, the petitioner has been inflicted with the punishment of line of Rs. 5,000/- to be realised from the salary of the petitioner and for no fault, the petitioner has been denied the financial benefits for the intervening period i.e. the date of compulsory" retirement till the date of reinstatement in service. Learned counsel for the petitioner further submits that the principles of "No Work No Pay" is not applicable in the instant case since the petitioner has been debarred from performing his duties by the reasons of the order of compulsory retirement. Learned counsel for the petitioner further submits that the appellate authority (respondent no. 2) committed an error and illegality by not giving any

cogent reason for not accepting the grounds raised in the appeal and thereby the appellate authority has passed a cryptic and non-reasoned order.

5. Per contra, learned counsel for the respondents has reiterated the submissions made in the counter affidavit.

Mr. L.C.N. Shahdeo, learned counsel for the respondent-State has vehemently submitted that the disciplinary authority has passed the just and proper punishment after consideration of the report and the appellate authority, the respondent no. 2 has passed the order after due consideration of the materials on record and the petitioner has been given ample opportunity to appear before the respondent no. 2 but the petitioner could not be able to convince the respondent no. 2 on his defences. Moreover, the reasoned order dated 21.11.2009 clearly show's that the misconduct cannot be pardoned because, it has led to financial loss to the corporation. On that score, the impugned order dated 21.11.2009 is not liable to be interfered with.

Having given my anxious consideration to the privatised submissions and on perusal of the records, it appears that the petitioner has been able to make out a case for interference due to the following facts and reasons :-

On the allegations of non-realization of fare from six passengers, the petitioner, while posted as a Bus conductor at Agrico Depot under Jamshedpur Division was proceeded departmentally and order of punishment of compulsory retirement under Section 74 (b) (ii) of the Bihar Sendee Code has been passed against the petitioner. In pursuance to the appeal/representations dated 11.06.2004 and 25.07.2007, the order of the compulsory retirement was revoked and the petitioner was reinstated in service vide order dated 21.09.2007 and the said decision was taken in view of the fact that due procedure before passing the order of compulsory retirement has not been followed. After reinstatement of the petitioner in sendee, again the proceeding was initiated and the charge sheet was issued to the petitioner vide memo dated 21.01.2008. The petitioner submitted his reply to the charge. Matter was enquired into and the enquiry officer submitted his report, wherein, the charges levelled against the petitioner have not been found proved in the said enquiry. However, the disciplinary authority without considering the findings of the enquiry officer and without consideration of the allegations has passed the impugned order dated 21.11.2009 imposing fine amount of Rs. 5.000/- to be realised from the salary of the petitioner and the petitioner has been deprived from the financial benefits for the intervening period i.e. the date of compulsory retirement till reinstatement in service. The intervening period for which the petitioner has been prevented to discharge his duties could not have been treated on the legal parlance on "No Work No Pay" basis. Therefore, on the face of it, the impugned order of punishment appears to be grossly disproportionate to the alleged charges considering the findings of the enquiry report. On perusal of the order of the appellate authority, it appears that the same has been passed in a very cryptic manner, bereft of any cogent reasons. In this respect, it would be profitable to

refer to the judgment of the Hon"ble Apex Court rendered in the case of Chairman, Life Insurance Corporation of India and others v. A. Masilamani reported in (2013) 6 SCC 530 and paragraph 19 of the said judgment appears to be relevant, which is quoted herein below: -

"19. The word "consider" is of great significance. The dictionary meaning of the same is, ??to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term "consider " postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order. (Vide Indian Oil Corpn. Ltd. v. Santosh Kumar and Bhikhubhai Vilhlabhhai Patel v. State of Gujarat)"

6. In view of the submissions made in the foregoing paragraphs, the impugned order of punishment dated 21.11.2009 passed by the Divisional Manager of the respondent Corporation (respondent no.4) and the order dated 18.03.2011 issued by the Joint Transport Commissioner, Jharkhand Ranchi (respondent no.2) affirming the order of punishment are quashed and set aside and the matter is remitted to the respondent nos.2 and 4 to consider the matter on the quantum of punishment and pass appropriate order within a period of 12 weeks from the date of receipt of a copy of the order.

7. With the aforesaid direction, the writ petition stands disposed of.