

(2007) 06 JH CK 0010

In the Jharkhand High Court

Case No : Writ Petition (S) No. 814 of 2007

Ghanashyam Tiwari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-06-2007

Acts Referred:

Bihar Civil Services (Classification, Control and Appeal) Rules, 1994 — Rule 49(A)

Citation : (2007) 2 BLJR 2189 : (2007) 3 JCR 654

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : A.K. Sinha and Saurav Arun, for the Appellant; R.R. Mishra, G.P. II in W.P. (S) No. 814/07, H.K. Singh, S.C.I in W.P. (S) No. 824/07, Sheela Prasad, G.P. IV in W.P. (S) No. 840/07 and M.S. Akhtar, S.C. II in W.P. (S) No. 879107, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—The common question arises in these writ petition(s) is as to whether the petitioner(s), whose parent department is Road Construction Department, can be put under suspension by the authority of Rural Development Department, Government of Jharkhand.

2. Identical relief(s) have been sought by the writ petitioner(s) for quashing their suspension order and for a direction to pay subsistence allowance during the period of suspension.

3. Writ petitioner of W.P.(s) No. 814 of 2007 was appointed as an Assistant Engineer by notification dated 25th November, 1981 in Public Works Department, which is now known as Road Construction Department. He was subsequently promoted to the post of Executive Engineer in December, 2003. He was sent on deputation in Rural Engineering Organisation on 16th December, 2003 and since thereafter he has been working at Jamshedpur in Works Division of Rural Engineering Organisation. It has been stated that the petitioner was surprisingly put under suspension by Notification No. 4558 dated 3rd July, 2006 issued under

the signature of Deputy Secretary, Rural Development Department, Government of Jharkhand, (Annexure-3) on the allegation of irregularity and illegality on the part of the petitioner in the construction work. The petitioner has alleged mala fide and want of jurisdiction in issuing the impugned order of suspension. It has been stated that since his parent department is Road Construction Department, any proceeding or order of suspension can be issued by that department and not by the department of Rural Engineering Organisation, where he was on deputation. The petitioner has stated that since after his suspension, not even a penny has been paid to him towards subsistence allowance and, accordingly, he has sought direction on the respondents to pay the subsistence allowance as well.

4. Writ petitioner of W.P.(S) No. 824 of 2007 was appointed as Junior Engineer by notification dated 21st February, 1983 in Public Works Department, now Road Construction Department. He was sent on deputation in Rural, Engineering Organisation Department in the year 1987. In course of the deputation, the petitioner suddenly received the order of suspension by Notification No. 4562 dated 3rd July, 2006 issued under the signature of Deputy Secretary, Rural Development Department, Government of Jharkhand, (Annexure-3) alleging irregularity and illegality on the part of the petitioner in the construction work and initiation of departmental proceeding against him. The petitioner has alleged that since after his suspension, subsistence allowance has not been paid to him.

5. Writ petitioner of W.P.(S) No. 840 of 2007 was appointed as an Assistant Engineer by notification dated 5th May, 1988 in Public Works Department, which is now Road Construction Department. He was, subsequently, sent on deputation in Rural Engineering Organisation on 31st December, 2003. In course of his deputation in Rural Engineering Organisation, Works Sub Division, at Jamshedpur, he was put under suspension by Notification No. 4559 dated 3rd July, 2006 issued under the signature of Deputy Secretary, Rural Development Department, Government of Jharkhand, (Annexure-3) on the allegation of his involvement in irregularity and illegality in the construction work. The petitioner has complained that since after his suspension, the subsistence allowance has not been paid to him.

6. Writ petitioner of W.P.(S) No. 879 of 2007 was appointed as Junior Engineer by notification dated 29th December, 1987 in Public Works Department, which is now known as Road Construction Department. He was, subsequently, sent on deputation in Rural Engineering Organisation on 12th January, 1988. In course of his deputation to Works Section, Potka, under Rural Engineering Organisation, Works Division, Jamshedpur, he was put under suspension by Notification No. 4561 dated 3rd July, 2006 issued under the signature of Deputy Secretary Rural Development Department, Government of Jharkhand. (Annexure-3) on the allegation of committing irregularity and illegality in the construction work. The petitioner has complained that since after his suspension, the subsistence allowance has not been paid to him.

7. Mr. A.K. Sinha, learned Senior Counsel, appearing on behalf of the petitioners,

in all cases, submitted that the impugned orders of suspension issued by Deputy Secretary of the Rural Development Department are wholly illegal, arbitrary and without jurisdiction. The Rural Development Department is neither appointing nor controlling authority nor approval has been taken from parent department of the petitioners before issuing the impugned order of suspension. Learned Counsel submitted that the respondents have not denied the said legal position, but have taken plea that by an amendment in Rule 49(A) of the Bihar Civil Services (Classification, Control and Appeal) Rules, issued by notification dated 24th June, 1991, besides the appointing authority or controlling authority, an authority authorized by general or special order issued by the Governor, is also empowered to put the Government Servant under suspension. However, the respondents could not bring on record any such special or general order, issued by the Government to that effect giving such power to issue order of suspension against the employee of the Road Construction Department by any authority of Rural Engineering Organisation. Learned Counsel submitted that on the contrary the Secretary Road Construction Department, has issued a circular vide Memo No. 1653(S) dated 30th March, 2007, reiterating that the employees/officers of the Road Construction Department can be put under suspension or departmentally proceeded against only by the authority of the Road Construction Department. Learned Counsel also referred to and relied upon earlier decision of this Court rendered in the case of Anil Prasad and Ors. v. State of Jharkhand and Ors. W.P. (S) No. 6903 of 2006 dated 4th January, 2007, whereby the orders of suspension issued by Deputy Secretary, Rural Development Department, against the employees of other departments were quashed, holding that the Rural Development Department has no authority to issue suspension orders against the employees of other departments.

8. Learned Counsel appearing on behalf of the State, on the other hand, reiterated their stand taken in the counter affidavits that the amended Rule 49(A) of the Bihar Civil Services (Classification, Control and Appeal) Rules confers power also on other authorities in addition to the appointing authority or controlling authority to put the Government Servant under suspension. The petitioners were under the administrative control of the Rural Engineering Organisation and that the said department has power to put the petitioner(s) under suspension. It has been submitted that the decision taken by the Rural Engineering Organisation has already communicated to the Road Construction Department with a request to initiate proceeding against the petitioner(s). Moreover the Rural Engineering Organisation is also a wing of the State Government and the impugned order(s) of suspension issued by the said department is not arbitrary and illegal.

9. The respondents beside taking the aforesaid plea against the petitioners" contention on their grievance for non-payment of subsistence allowance has also stated in the counter affidavit that till date pay slips of the petitioner(s) have not been made available in the Road Construction Department, the headquarter(s) fixed for them after their suspension, and as soon as the same is made available,

steps shall be taken for payment of subsistence allowance.

10. The question raised in the aforesaid writ petition(s) is no more *res integra* in view of the decision of this Court in the case of Anil Prasad and Ors. (Supra). The provision of Rule 49(A) of the Bihar Civil Services (Classification, Control and Appeal) Rules also clearly provides that the appointing/controlling authority has power to put the Government Servant under suspension.

11. Even the provision of amended Rule 49(A) of the Bihar Civil Services (Classification, Control and Appeal) Rules does not confer any blanket power to any authority other than those prescribed under the provisions of Rule 49(A) (before amendment) of the said Rules to put a Government Servant under suspension. Such power has to be conferred on the other authority by the Governor by issuing any general or special order to that effect. No such general/special order issued by the Governor has been brought on record by the respondents to justify the impugned action. There is no material on record to take any different view even in cases, in hand, as has been urged by learned Counsel for the respondents. The circular issued by the Road Construction Department by Memo No. 1653(S) dated 30th March, 2007 has further clarified the provision that the employees/officers of Road Construction Department can be put under suspension and departmentally proceeded against only by the authority of the Road Construction Department.

12. In view of the aforesaid discussions and legal provisions, I hold that the impugned order(s) of petitioners' suspension issued by the Deputy Secretary, Rural Development Department, Government of Jharkhand, who is admittedly neither appointing authority nor controlling authority nor the authority, generally or specially empowered by the Governor, are wholly without jurisdiction and the same are nonest. The impugned order(s) of suspension, as contained in Annexure-3 to all the aforesaid writ petition(s), are hereby quashed. Since the petitioners' suspension order(s) have been quashed, they are entitled to get their full salary for the intervening period and in that view, there is no occasion to pass any order for payment of subsistence allowance, as prayed for in these writ petition(s). However, any amount paid towards the subsistence allowance to any petitioner(s), the same shall be adjusted/deducted while paying salary of the said period. The writ petition(s) are, accordingly, allowed. However, there is no order as to costs.