
(2017) 02 JH CK 0165
In the Jharkhand High Court
Case No : 01 of 2016

Hem Bahadur Limbu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 02 JH CK 0165

Hon'ble Judges : Pramath Patnaik

Bench : SINGLE BENCH

Advocate : H.K. Mehta, V.P. Singh, A.K. Sahani

Judgement

1. In the accompanied writ application, the petitioner has inter alia prayed for quashing (i).show cause notice dated 18.08.2015 allegedly issued for indiscipline and arbitrariness in the matter of proceeding on leave; (ii).order dated 06.11.2015, whereby the petitioner was directed to take over the charge of the post of Technical Secretary to Chief Engineer, National Highway Wing, Road Construction Department, Jharkhand and further (iii).show cause notice dated 22.12.2015 for the alleged indiscipline and arbitrariness under the threat of initiation of a departmental proceeding.

2. The brief facts, as disclosed in the writ application, is that initially the petitioner was appointed on the post of Assistant Engineer on 16.06.1987 and by passage of time, the petitioner was granted regular promotion to the post of Superintending Engineer (Civil) in Road Construction Department. While working as such the petitioner fell ill, hence, he submitted application for grant of casual leave initially for two days and later on submitted application for extension of leave. But the respondents-authorities served a show cause notice dated 18.08.2015 upon the petitioner to submit explanation for the alleged indiscipline and arbitrariness for proceeding on leave and remaining absent till date i.e. 18.08.2015, to which, the petitioner replied vide letter dated 27.08.2015.

However, after joining, the respondent no. 3 issued order dated 06.11.2015 whereby direction was issued to the petitioner to take charge of the post of Technical Secretary to Chief Engineer, National Highway Wing, Road Construction Department, Jharkhand. In compliance thereof, the petitioner took over the charge of the post of Technical Secretary to Chief Engineer, National Highway Wing, Road Construction Department, Ranchi including additional charge of Chief Engineer, National Highway Wing, Road Construction Department and sent self-assumption charge report letter dated 09.11.2015. Thereafter, the Dy. Secretary vide show cause notice dated 22.12.2015 asked the petitioner to submit explanation for the alleged leave and indiscipline and arbitrariness, to which, the petitioner replied vide letter dated 30.12.2015.

3. Learned senior counsel for the petitioner submitted that only in order to frustrate the genuine claim of the petitioner for grant of promotion and in order to overcome the order passed by this Hon'ble Court in W.P. (S) No. 415 of 2015 wherein it is ordered to consider the case of the petitioner with regard to payment of arrears of salary and other service benefits with allowances legally payable to him on account of his promotion, the respondents had been continuously trying to punish the petitioner. It has further been submitted that Sri Surendra Pandey is junior to him but by virtue of impugned order dated 06.11.2015, he will be compelled to work under him, which is against the policy of Government of Jharkhand dated 25.01.2006. It has further been submitted that vide Notification dated 03.09.2014, the petitioner was posted on the post of Secretary (Technical) to the Chief Engineer, National Highway Wing, Road Construction Department, Govt. of Jharkhand with additional charge of Chief Engineer of the said wing and accordingly, he took over charge of those posts on 03.09.2014. It has further been submitted that after the interim order passed by this Court on 03.03.2016, the petitioner has been posted as Chief Engineer I/C, Water Board, Ranchi. But, it is pertinent to mention here that the post of Chief Engineer, Ranchi Jal Parisad, come under the direct control of Sri Arvind Singh, who is presently holding the post of Engineer-in-Chief of the Building Construction Department and admittedly he is junior to the petitioner, which would frustrate the order dated 03.03.2016 passed by this Court. Learned senior counsel for the petitioner submitted with vehemence that even in the case of making In-

charge arrangement of higher posts, seniority, reservation etc must be considered as per letter dated 25.01.2006 issued by the Personnel Administrative, Administrative Reforms and Rajbhasha Department, Government of Jharkhand. Referring to the judgments rendered in the case of Jaibir Mishra Vs. L.N. Mithila University & Ors as reported in 1987 PLJR 838, learned senior counsel for the petitioner submitted that if an ad-hoc appointment is made senior must get such ad-hoc appointment/promotion. Learned senior counsel for the petitioner further submitted that it is well settled principle that notification cannot be amended or replaced by an order and do hors to such settled principle, in the case at hand though vide notification dated 03.09.2014 the petitioner was

posted as Technical Secretary to the Chief Engineer, National Highway Wing with additional charge of the post of Chief Engineer, National Highway Wing, Road Construction Department but vide order dated 06.10.2015 he was directed to take charge of Technical Secretary to Chief Engineer, National Highway Wing, Road Construction Department. Hence, such order has no value in the eye of law and notification dated 03.09.2014 shall prevail whereby the petitioner was made additional charge of Chief Engineer.

4. Controverting the submissions advanced by learned counsel for the petitioner, learned counsel for the respondents submitted that the petitioner is basically a Superintending Engineer of Road Construction Department and vide order dated 06.11.2015, the petitioner has been posted as Technical Secretary to the Chief Engineer (N.H.), which is equivalent to Superintending Engineer.

However, he took over the charge to the post of Chief Engineer (N.H.), against the departmental order dated 06.11.2015. Hence, show cause notice dated 22.12.2015 was issued against the petitioner for taking over charge of Chief Engineer (N.H) on its own and for unauthorized leave. It has been averred that since Mr. Surendra Pandey, Superintending Engineer, N.H. Circle was already posted as additional charge of Chief Engineer, N.H. Wing vide notification dated 28.05.2015, in such circumstance, taking additional charge of Chief Engineer by the petitioner is against the discipline. Actual fact is that demand of the petitioner to give the salary for in-charge post was denied vide departmental order dated 15.10.2015. The petitioner has displayed acute indiscipline by absconding from duty for three and half months, which is a grave offence. It has further been submitted that vide departmental letter dated 31.03.2016, the petitioner has been posted in higher hierarchy post i.e. In-Charge Chief Engineer in Water Board, Ranchi, hence, the grievance of the petitioner regarding his posting has now been redressed.

5. On bare perusal of show cause notice dated 18.08.2015, Annexure 6 to the writ application, it transpires that the same has been on the allegation that the petitioner proceeded on leave on 20.05.2015 for ten days without proper sanction and again on 01.06.2015 submitted application for extension of leave for 15 days but till 18.08.2015 he did not join the services, which shows indiscipline and arbitrariness of the petitioner. Pursuant thereto, the petitioner submitted his reply dated 27.08.2015 mentioning therein all the factual and legal aspects and submitted his joining

report on 31.08.2015. Whether the application submitted by the petitioner was sanctioned or not or whether the petitioner submitted proper application, this Court cannot go such disputed question of fact.

6. Petitioner has further challenged office order dated 6.11.2015 whereby petitioner has been directed to take over the charge on the post of Technical Secretary to Chief Engineer, National Highway Wing, Road Construction Department, Jharkhand. From the submissions advanced by learned counsel for

the parties, it appears that petitioner joined on the said post and submitted his joining report on 09.11.2015 in addition thereto the petitioner also sent self-assumption charge of Chief Engineer, National Highway Wing, Road Construction Department. It is pertinent to note here that during pendency of the writ application, one Interlocutory Application No. 446 of 2016 was filed mainly for direction upon the respondents to post the petitioner against the sanctioned post not below the post held by the persons juniors to him. The said application was disposed of with a direction to the respondents to consider the case of the petitioner for suitable posting in accordance with rules. Pursuant thereto, vide departmental letter dated 31.03.2016, the petitioner has been posted in higher hierarchy post i.e. In-Charge Chief Engineer in Water Board, Ranchi. Hence, in any way, no order need be passed in this regard. However, the petitioner has raised again objection stating that the post of Chief Engineer, Ranchi Jal Parisad, comes under the direct control of Sri Arvind Singh, who is presently holding the post of Engineer-in-Chief of the Building 7 Construction Department and he is junior to the petitioner. (Be that as it may be, vide order dated 06.11.2015 the petitioner was only directed to take over the charge of Technical Secretary to Chief Engineer, National Highway, Road Construction Department and he on its own took the charge of Chief Engineer, I/c, Road Construction Department, admittedly on the said post another person was working. May he be junior to him but he ought to have raised his grievances before the appropriate authority, which he did not, hence, show cause notice dated 22.12.2015 was issued. Hence, the judgment cited by learned senior counsel for the petitioner shall not come to rescue the petitioner.

7. The third prayer is for quashing show cause notice dated 22.12.2015. From bare perusal of which, it appears that the same has been issued for remaining absent for 109 days without sanction of leave and without any information and remaining absent during the visit by the concerned Minister of the department and did not participate in the meeting and in the show cause it is further alleged that he took self-assumption charge on the post of Chief Engineer, National Highway Wing, Road Construction Department, on which, another person Sri Surendra Pandey was already working vide departmental notification dated 28.05.2015, which shows his indiscipline and arbitrariness. In this regard, learned senior counsel for the petitioner has vehemently submitted that said Sri Surendra Pandey was given additional charge of Chief Engineer, In-Charge due to proceeding of the petitioner on leave, hence, it was a ad hoc arrangement only. Be that as it may be, this Court cannot go into

the factual aspect of the matter regarding leave whether, there was application for leave or not or whether it was sanctioned. These disputed question of fact cannot be gone into by this Court under Article 226 of the Constitution of India and furthermore, at this stage, I do not find any reason to give any opinion, which may affect the case of the petitioner without there being any materials or without appreciation of evidence in this regard.

8. In the net result, as a cumulative effect of the aforesaid facts, and reasons, I am of the opinion that the petitioner has not been able to make out a case for interference by this Court. Accordingly, the writ petition is dismissed, being devoid of any merit.