

(2005) 02 JH CK 0008
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5712 of 2001

Hira Lal Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 3(1), 3(A)
Constitution of India, 1950 — Article 226
Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 — Section 43A(2)

Citation : (2005) 2 JCR 259

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : Anoop Kumar Mehta, for the Appellant; K.K. Jhunjhunwalla, G.P. III, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—Heard learned counsel for the petitioner as well as learned Counsel for the respondents. Counter affidavit has been filed.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the impugned order of dismissal passed by respondent No. 2, contained in order No. 92 of 2001 communicated to the petitioner, vide Memo No. 533/Estt, dated 14.9.2001 (Annexure 10) whereby and whereunder respondent No. 2 has been pleased to dismiss the petitioner along with two others.

3. The petitioner was posted as Halka Karamchari and on transfer from Palajori Anchal to Sarath Anchal in the sub-division of Deoghar he was to take charge of Halka No. 11-B from the out going Halka Karamchari Sri Achhay Kumar Thakur which also included Mouza Kunda. One of the day of a Halka/Revenue Karamchari is collection of the rent in respect of demand standing in Register II maintained in the office of the Circle Officer and u/s 43-A(2) of the Santhal Pargana Tenancy Act, 1949, the tenant is required to pay rent and u/s 47(1), the

tenant is entitled to rent receipt in respect of the rent paid. Under Rule 8 of the Rules providing for verification of collections, assessment of cess etc. in respect of vested estates and tenures u/s 3(1) or 3(A) of the Bihar Land Reforms Act, 1950, the demand for the year will be the demand for the financial year commencing from 1st of April and the Circle Officer under the rules is responsible for preparing Register II i.e.. tenant's register separately for each Halka in his circle from the revenue record i.e., khatiyani. The revenue Karamchari cannot make any alteration unless any order is passed and the concerned Circle Officer is required to communicate the order in the form of a correction slip. Basu Lodge, Kalpana Basu used to pay rent as tenant and she died in 1986, but no instruction or order was issued or communicated to the concerned Revenue Karamchari of Kunda Halka and even no order was communicated to the Circle Officer, Deoghar and hence no amendment was made in the demand register, i.e., Register II and accordingly collection of rent was made and rent receipt was issued to Birendra Kumar Thakur for the year 1989-90 and Sri A.K. Thakur for the year 1993-94. The petitioner also issued rent receipt for the year 1994-95. The petitioner collected rent as there was no specific order or direction from the controlling officer, i.e., the respondent No. 4 also issued rent receipt in the name of the tenant Kalpana Basu, although rent receipt as issued "without prejudice" still respondent No. 2 issued show cause to three persons including the petitioner asking them to explain under, what circumstances rent receipt was issued in favour of the owner of Basu Lodge in spite of the fact that the property vested in the State on being abandoned. The petitioner submitted his show cause on 17.8.1995 denying the charges. The petitioner was served with charge-sheet by letter contained in Memo No. 320(A), dated 19.8.1995 and he was also placed under suspension. Sri S.S. Tiwary, Executive Officer, was appointed as Enquiry Officer to enquire into the charges levelled against the petitioner.

3. There was some amendment by order dated 24.8.1995 to the effect that the Case No. 18/87 as mentioned in the charge-sheet be read as 8/87. The petitioner submitted his show cause on 7.9.1995 and from 25.9.1995 the enquiry proceeding commenced and depositions were recorded. Respondent No. 4 in course of his deposition deposed that he did not receive any order from the superior authority for correction of the demand standing in the name of Kalpana Basu in respect of Basu Lodge. By letter No. 711, dated 15.9.1997, the respondent No. 3 made a query from the respondent No. 4 as to whether any order was received by his office for cancellation of Jamabandi in respect of "Basu Lodge" and in reply thereto, the respondent No. 4 vide his letter No. 342, dated 23.9.1997 sent a reply that his office has not received any letter dated 24.9.1987 passed in Misc. Case No. 8/87 for cancellation of Jamabandi of "Basu Lodge" in Kunda Mouza. The enquiry officer after conducting enquiry submitted a report to the respondent No. 2 and thereafter a second show cause was issued by the Deputy Commissioner, Deoghar along with a copy of the order sheet relating to enquiry including the enquiry report. The petitioner submitted a detailed show cause on 9.2.2001 both on facts as well as on law. The respondent

No. 2 without considering the merits of the case also the fact that there was no illegality committed by the petitioner yet by an order No. 94 of 2001 communicated to the petitioner, vide Memo No. 533, dated 14.9.2001, the petitioner was dismissed from his service with immediate effect.

4. The contention of learned counsel for the petitioner is that petitioner issued receipt for Basu Lodge for the period 1993-94, but prior to that two others Halka Karamchari had already issued receipts and, thereof, he was not guilty or he was not responsible because two others Halka Karamchari had already issued receipt and there was no such entry in Register II that the house in question has vested in the State of Bihar, although with the death of owner of the Lodge vested in the State, but there was no such entry in Register II and in course of deposition one Block Development Officer, who deposed in the year 1995 said that he has got no information that this Lodge has vested in the State. It was further pointed out that charge-sheet was served with respect to negligence and issuing rent receipt for the year 1993-94. But finding is based against the Halka Karamchari on the dereliction of duty in respect of previous place of posting such as non-submission of the rent receipts and other things and on the basis of those allegations also punishment has been provided, although that those allegations a separate charge-sheet should have been issued and show cause called for but no such procedure was adopted and, therefore, the findings of the Enquiry Officer based on those allegations for which no charges were framed or show cause was called for. Hence, this dismissal order is vitiated in law.

5. On the other hand, learned State counsel submitted that two others Halka Karamchari, who were also charge-sheeted along with this petitioner had also filed similar writ but in their case the impugned order of dismissal was quashed and the matter is remitted back to the authority for re-consideration on the point of punishment by a reasoned order. He has also filed a writ being WP (S) No. 5445 of 2002.

6. After having considered the rival contention of the parties it appears that petitioner, who was Halka Karamchari of the area concerned issued rent receipt for the period 1993-94, although prior to him two others Halka Karamchari had also issued rent receipts for the Lodge which is already vested in the State. It is stated that Halka Karamchari should have knowledge about the area under his jurisdiction about the revenue records of right should not have been issued rent receipt because by issuing rent receipt it is alleged that he tried to help the tenant, who was claiming the house for which a case had already been decided and two other predecessors of the petitioner had also issued rent receipts for the Lodge. His negligence is not like that of other two petitioner. So far as the case of other two petitioners are concerned, his case is also different of the petitioners in view of the fact that while finding guilty for the charges the previous conduct of the petitioner is not submitting when he was postal at Srailochan. It is alleged that he did not hand over the charge and he gave a wrong statement concealing the fact and he did not hand over the file related to Nazir and correction slip and,

therefore, he was found guilty of the charges also for not handing over the papers. For those charges, no show cause was called for and those charges were included in the first charge-sheet issued and subsequently those charges were added without calling for show cause or without giving an opportunity to him to file show cause, therefore, the findings arrived at against him is not justified because he should also have given an opportunity to consider all the charges but as per the fact brought on record it is also serious that he did not hand over the charge of those papers.

7. Hence, considering all the facts on record, I am of the view that since departmental proceedings has not been conducted against him in proper way and in the departmental proceeding those allegations have been included for which no show cause was called for from the petitioner, in that view of the matter the punishment order of dismissal passed by respondent No. 2, contained in order No. 92 of 2001, vide Memo No. 553/Estt, dated 14.9.2001 (Annexure 10) is hereby quashed.