

(2003) 03 JH CK 0059
In the Jharkhand High Court
Case No : WP (S) No. 47 of 2002

Jagdish Choubey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-03-2003

Acts Referred:

Bihar Service Code, 1952 — Rule 97
Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 23

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : A. Allam, M.M. Banerjee and Ajit Kumar, for the Appellant; Mahua Palit, J.C. to G.A., for the Respondent

Judgement

S.J. Mukhopadhaya, J. 1. This application has been preferred by petitioner against the notification No. 1954 dated 19th October, 2001 whereby and whereunder the petitioner has been dismissed from service. It has also been mentioned that the petitioner shall not get any amount for the period of suspension except the subsistence allowance,

2. The brief case of petitioner is that he was suspended vide order No. 9 dated 25th June, 1998 by the State of Bihar. A Departmental proceeding, thereafter, was initiated by the State of Bihar vide Resolution No. 1999 dated 10th July, 1998. The petitioner filed show-cause reply denying the allegations and attended the proceeding. The Enquiry Officer submitted enquiry report some time in 1999 (vide Annexure 8) but thereafter no final order was passed.

3. After re-organization (15th November, 2000) of the State the petitioner continued in his Headquarter at Galudih, District-Singhbhum (West). No final order having passed the petitioner had to move before this Court in CWJC No. 1485/2001 against the order of suspension and departmental proceeding. A Bench of this Court vide order dated 17th April, 2001 directed the Disciplinary Authority to pass final order, in accordance with law, without being prejudiced by

the order of the Court, within four weeks from the date of receipt/ production of a copy of the Court's order. It was made clear that if no final order is passed within the aforesaid period the order of suspension and departmental proceeding, shall stand automatically quashed.

4. It appears that the petitioner produced the order of the Court before the Deputy Secretary, Water Resources Department, Government of Bihar, Patna though he had no jurisdiction. The State of Bihar thereafter forwarded a copy of enquiry report to the petitioner. On receipt of reply the State of Bihar also took opinion of the Bihar Public Service Commission. Patna. The Bihar Public Service Commission, Bihar, Patna by its letter dated 9th June, 2001 suggested to inflict punishment of reduction to the lowest grade. On receipt of such opinion the State of Bihar issued notification No. 1954 dated 19th October. 2001 and dismissed the petitioner from service.

5. The main plea taken by petitioner is that the State of Bihar had no jurisdiction to punish the State of Jharkhand being the Disciplinary Authority of petitioner since 15th November, 2000, he being posted at a Headquarter within the territory of Jharkhand. Reliance was placed on a Division Bench decision of this Court in the case of State of Bihar v. Arvind Bijoy Billing and Ors., reported in 2002 (1) LJ 697. In the said case, this Court held that in respect of the officials serving in the territories now forming the State of Jharkhand, the competent authority to impose any penalty would be Government of Jharkhand or the officers of the Jharkhand and not the Government of Bihar or the officers of Bihar even if the subject-matter of the charge-sheet relates to a period of time prior to 15th November, 2000.

6. The respondents have not disputed the fact that the petitioner was posted in the State of Jharkhand and also continued after 15th November, 2000 onwards. Therefore, State of Bihar having no jurisdiction, the impugned notification No. 1954 dated 19th October, 2001 is set aside.

7. Admittedly, the petitioner failed to produce the copy of the Court's order dated 17th April. 2001 before the Disciplinary Authority i.e. the State of Jharkhand within the period prescribed by the Court. Therefore, the petitioner cannot derive any advantage to assail the Departmental Proceeding. Accordingly, the case is remitted to the State of Jharkhand through its Secretary, Water Resources Department, Government of Jharkhand, Ranchi to pass appropriate order in the Departmental Proceeding preferably within four months from the date of receipt/production of the copy of this order.

8. The petitioner will produce a copy of this order, along with the notification of suspension; the resolution under which the departmental proceeding (charge-sheet) was initiated; the copy of the enquiry report and the show-cause reply if any filed by him before the Secretary, Water Resources Department, Jharkhand and may bring to the notice of the authority that the enquiry was completed and closed within a day. The petitioner may also enclose a copy of the opinion of the

Bihar Public Service Commission, Bihar, Patna.

9 The State of Jharkhand may obtain fresh opinion from the Jharkhand Public Service Commission and will pass appropriate order preferably within four months from the date of receipt/production of a copy of this order.

10. So far as salary of the intervening period is concerned, State of Jharkhand shall determine after final order as may be passed in the Departmental Proceeding, as per Rule 97 of the Bihar Service Code, but the petitioner be treated to have been re-instated with immediate effect.

11. The State of Bihar is also directed to forward the relevant file relating to departmental proceeding of petitioner to the concerned Department of State of Jharkhand, immediately, if not yet forwarded.

12. The writ petition stands disposed of with aforesaid observations and directions.