
(2005) 01 JH CK 0036
In the Jharkhand High Court
Case No : L.P.A No. 254 of 2003

Jamuna Prasad

APPELLANT

Vs

J.S.E.B. and Others

RESPONDENT

Date of Decision : 05-01-2005

Acts Referred:

Citation : (2005) 3 JCR 130

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : A.k. Jha, D.K. Chakraborty, for the Appellant; Ajit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Maintainability of the appeal

1.This appeal has been preferred by the appellant against the order dated 18th Sep-tember, 2001 passed by the learned Single Judge in C.W.J.C. No. 276 of 2000, whereby and whereunder, the writ petition preferred by him was dismissed. Against the said order, the appellant preferred appeal being L.P.A. No. 762 of 2001. In the said appeal, neither the Bihar State Electricity Board nor its concerned officers having been impleaded as party respondents, Bench of this Court vide order dated 9th January, 2003 dismissed the appeal being not maintainable.

2. The appellant, thereafter, preferred the present appeal against the said order passed by learned Single Judge dated 18th September, 2001 in C.W.J.C. No. 276 of 2000. In the present case, Bihar State Electricity Board (B.S.E.B. for short), Jharkhand State Electricity Board (J.S.E.B. for short) and its Officers have been impleaded as party-respondents but the office of this Court has raised the question of maintainability of the present appeal, earlier appeal having been dismissed.

3. Counsel for the appellant while referred to earlier order dated 9th January,

2003 passed in L.P.A. No. 762 of 2001, submitted that the earlier appeal having been dismissed being not maintainable on the ground of non-joinder of the parties and no decision having been given, the present appeal is maintainable. He states that a separate petition for condonation of delay has been filed.

4. From the order dated 9th January, 2001 passed in L.P.A. No. 762 of 2001, it appears that the appeal dismissed for non-joinder of necessary parties, but the appellant did not choose to obtain liberty from the Court to file another appeal after impleading the proper parties as party respondents. However, taking into consideration the nature of the case, we have also heard the case on merit.

I.A. No. 879 of 2003

5. This appeal has been preferred by the appellant after delay of two years for the reasons as mentioned above. The Court has noticed the ground for preferring this appeal after such delay.

6. Having heard the counsel for the parties and being satisfied with the ground shown therein, we condone the delay of two years in preferring this appeal, subject to maintainability of the appeal.

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7. The appellant was in the services of B.S.E.B. (now J.S.E.B.). While he was posted as Junior Electrical Engineer at Siwli Jari Supply Section, Dhanbad, in course of collection of the revenue from consumers, he along with one Uday Shakar Sinha, bill clerk- cum-cashier made collection on 28th December, 1995 and proceeded towards office. According to him, the revenue collected by them, was looted by some unknown miscreants while they were proceeding towards office on motor-cycle. The matter was reported to the office and F.I.R was lodged. A departmental proceeding was initiated against him and said Uday Shankar Sinha. It was alleged that the appellant and Uday Shankar Sinha having not taken proper care during their duty, the amount was looted by miscreants. In the departmental proceeding, the appellant having found guilty, the disciplinary authority i.e. B.S.E.B. vide its resolution dated 16th December, 1999 imposed punishments of censure, stoppage of increment and recovery of a sum of Rs. 26,500/-from his salary. Against the said order, the appellant preferred a writ petition, C.W.J.CV No. 276 of 2000, which was dismissed by the learned Single Judge on 18th September, 2001 on merit after hearing both the parties.

8. The main plea taken by the counsel for the appellant is that there was no laches on the part of the appellant. He was not provided with any departmental vehicle though he asked for it. No vehicle was provided to him and for that if the miscreant looted the cash amount while he and cashier were proceeding towards the office, the appellant cannot be held guilty.

9. Having heard the counsel for the parties, we are not inclined to grant relief. This Court under writ jurisdiction cannot take notice of certain facts which were not brought on the record nor can give its own finding of fact to hold that the

appellant is not guilty. It is not the case of the appellant that the enquiry report is perverse or the enquiry was held in violation of rules of natural justice.

10. We find no ground made out to interfere with the order passed by learned Single Judge. There being no merit, this appeal is dismissed.