
(2019) 07 CHH CK 0071
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 7386 Of 2010

Jasinta Toppo

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 CHH CK 0071

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Awadh Tripathi, Jitendra Pali

Final Decision : Dismissed

Judgement

P. Sam Koshy, J

1. Challenge in the present writ petition is the impugned order dated 22.06.2004 (Annexure P/1) whereby the petitioner was inflicted with the punishment of stoppage of five annual increments without cumulative effect. The said order was subsequently modified in an appeal vide Annexure P/2, dated 27.01.2006 whereby the punishment was reduced to stoppage of three annual increments without cumulative effect. Challenge also is to the rejection of the review petition which the petitioner had filed against the order of appellate authority. The nature of punishment is that of minor punishment. The rigor and effect of that punishment order by now must have lost its efficacy. The writ petition is of the year, 2010 and coming up for hearing after nine years.

2. The contention of the petitioner is that, the petitioner had submitted a detailed reply with specific details to the authorities concerned so far as establishing that the charges levelled against the petitioner is totally without any basis and on the contrary the petitioner infact has discharged her duties in accordance with rules and regulations and as such the charges could not have been said to have been established or proved. The petitioner referred to the document Annexure P/7

which is a reply to the second show cause notice issued by the disciplinary authority wherein the petitioner has tried to justify the two charges which have been found proved against the petitioner.

3. According to the petitioner, so far as absence of 72 days are concerned, the petitioner has submitted specific documentary proof to establish that she was not absent even for a single day and that she has worked in the entire 72 days during which it is alleged that she was absent.

4. So far as allegation of the petitioner having embezzled an amount of Rs.10,000/- is concerned, it is the contention of the petitioner that there are specific document which she had produced to show that the amount has been duly paid back to the same person and the entire amount has been properly accounted in the Register available with the department. According to the petitioner, these were only two charges for which she has been punished and in all other charges levelled against the petitioner, she has been discharged by the appellate authority. Thus, prayed for setting aside of the impugned order and also prays for quashment of the orders passed by the appellate authority.

5. The State counsel, on the other hand, opposing the petition submits that it is a case where the petitioner infact has been involved in irregularities and embezzlement in the course of performing her duties and she was served with a charge sheet and thereafter departmental enquiry was duly conducted and it is based on the findings of fact that the disciplinary authority has imposed a punishment which has further been subjected to scrutiny by the appellate authority on two occasions and the appellate authority thereafter reduced the punishment order to some extent. Thus, there is not scope of interference for this court under Article 226 of the Constitution of India.

6. Having heard the contentions put forth on either side and on perusal of records, what is apparently evident from the record is that the petitioner was issued with a charge sheet on 16.07.2001. It is not the contention of the petitioner that the charge sheet was never served upon the petitioner, yet, the petitioner did not think it proper to submit reply to the charge sheet. Thereafter, the department ordered for conducting departmental enquiry. In spite of proper service it appears that the petitioner did not participate in the departmental enquiry and the enquiry officer as such had to proceed exparte against the petitioner.

7. On the submission of the enquiry report, the disciplinary authority issued as show cause notice to which the petitioner for the first time submit her reply and thereafter the disciplinary authority has passed the impugned order on 22.06.2004 (Annexure P/1) which has been further affirmed by the appellate authority vide Annexure P/2 dated 27.01.2006 and the review of which also has been rejected by the appellate authority on 25.08.2006 (Annexure P/3).

8. It is settled position of law that the High Court in exercise of power of superintendence or under the scope of judicial review exercising the powers

under Article 226 of the Constitution of India would not substitute itself as a second appellate authority over the decision of the disciplinary authority and that of the appellate authority. This court again would not conduct a roving enquiry threadbare which has been adduced before the enquiry officer.

9. Perusal of record would show that during the course of enquiry, the attendance Register was produced and where the petitioner was found absent from duties for 72 days at intermittent period. Secondly, the relevant portion of Cash Register was also produced to show the embezzlement so far as Rs.10,000/- is concerned. Likewise, an affidavit also was filed by Shri Nand Kishore Mishra, Husband of late Sukh Bai, in which he has categorically stated that he has received only Rs.15,000/- instead of Rs.25,000/-. These are all material facts which have come before the enquiry officer as evidence.

10. In view of the same, it cannot be said that the findings of disciplinary authority or for that matter the appellate authority to be a finding without any evidence or a perverse finding. Moreover, the punishment imposed also is a minor punishment of stoppage of three annual increments without cumulative effect.

11. For all the aforesaid reasons, this court is of the opinion that no strong case is made out by the petitioner to interfere with the order of punishment. The writ petition accordingly being devoid of merit deserves to be and is dismissed.