
(2014) 02 JH CK 0031
In the Jharkhand High Court
Case No : Writ Petition (S) No. 7880 of 2012

Jyoti Minz

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Citation : (2014) 02 JH CK 0031

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Indrajit Sinha, Ajay Kumar Sah and Raunak Sahay, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner was imposed with a punishment under Memo no. 27389 dated 11th September, 2012 as follows:

- i) He will not be posted on any responsible post in future;
- ii) Withholding of five increments with cumulative effect;
- iii) Recovery of 10% of the amount of loss i.e. Rs. 13,98,375/- in installment from the salary of the petitioner which would be half of her salary, with a condition that if the said amount is not recovered till her retirement, the balance amount would be realized from the gratuity and earned leave encashment amount.

2. The petitioner at the relevant point of time when she was charge-sheeted for certain alleged misconduct, was serving as the In-charge Officer of Monitoring Team at Lohardagga under the respondents, Agriculture and Sugarcane Department, Government of Jharkhand Under the charge-sheet issued on 2nd June, 2011 (Annexure-3), the petitioner was proceeded for certain alleged misconduct relating to loss of potato seeds to the extent of 520 quintals on

account of rotting which was a result of lack of diligence and negligence on the part of the petitioner, who was the member of the extension training centre, Hehal and had the responsibility of distribution of the seeds under the Seeds Distribution Programme. The other charges related to the same incidence which resulted in loss of Rs. 13,98,375/- to the Government exchequer.

3. According to the petitioner, she submitted her show cause on 4th July, 2011. From perusal of the counter affidavit submitted by the respondents, it appears that the respondents conducted an inquiry against the petitioner under the said charge-sheet and the charges were found to be proved against her. Thereafter a second show cause was also issued upon the petitioner which she replied on 5th January, 2012. After consideration of the said show cause, the impugned order of punishment has been passed (Annexure-6) dated 11th September, 2012, imposing the aforesaid punishment referred to hereinabove.

4. However, the petitioner by way of an I.A. No. 8818 of 2013 has brought on record a judgment passed in W.P.(S) No. 7908 of 2012 dated 25th November, 2013, as per which, according to him, in similar circumstances, this court in the case of the said petitioner, Brahmdeo Prasad Mandal has been pleased to quash the order of punishment, however leaving it open to the respondents to recover the loss suffered by the department, after issuing fresh show cause notice and furnishing relevant documents to the petitioner.

5. Therefore, the petitioner has also sought quashing of the impugned order as it is identical to the said case which also related to the same loss of Rs. 13,98,375/- in respect of distribution of potato seeds of an officer who was at the relevant point of time working as District Agriculture Officer, Lohardagga.

6. I have heard learned counsel for the parties and gone through the relevant materials on record.

7. It appears that the said petitioner was also charge-sheeted with the allegation of negligence causing loss of Rs. 13,98,375/- and by the order of punishment dated 11th September, 2012 i.e. on the same date as that of the said petitioner, she was inflicted with major as well as minor penalty. The question that was considered by the learned Single Judge in the said case was whether a major penalty and a penalty of recovery can also be imposed in one order of punishment. After referring to the judgment rendered in the case of Union of India (UOI) and Another Vs. S.C. Parashar, the learned court found that under the relevant provisions of Civil Service (Classification, Control and Appeal) Rules, 1930, there is no provision which empowers the authority to inflict two major penalty including an order of recovery in one punishment order. It was also observed that no reason has been assigned by the disciplinary authority for ordering recovery of 30% of the total loss. In such circumstances, the impugned order was quashed giving liberty to the respondents to pass a fresh order after issuance of fresh show cause notice and furnishing relevant documents to the said petitioner.

8. In the present case, for the loss of the same amount, the petitioner was also charge-sheeted on 2nd June, 2011 and after the departmental proceeding she has been imposed with the aforesaid punishment by an order of the same date i.e. on 11th September, 2012, in more or less similar terms imposing major penalty as also recovery of 10% of the amount i.e. Rs. 13,98,375 in monthly installment from the salary of the petitioner. The petitioner has also contended that the respondents have not disputed the fact that no money was paid to the company against supply of potato seeds causing no revenue loss to the Government.

9. According to the learned counsel for the parties, the company has also been blacklisted for supply of potato seeds of different crops and certificate case has also been instituted against the company as per the statements made in para 6 of the counter affidavit to the instant I.A.

10. In the aforesaid background of the facts and circumstances, it appears that the impugned penalty order passed against the petitioner imposing both major penalty as also recovery of the amount is in teeth of the judgment rendered by Hon'ble Supreme court in the case of Union of India (Supra). The learned Single Judge in similar circumstances, proceeded to quash the impugned order in respect of another petitioner who had also been proceeded against for loss of the same amount.

11. The opinion of the learned Single Judge contained at para 6 to 9 are quoted hereunder:

6 A perusal of the penalty order would disclose that, the only question involved in this case is, "whether a major penalty and a penalty of recovery" also can be imposed in one order of punishment.

7. In Union of India (UOI) and Another Vs. S.C. Parashar, the Hon'ble Supreme Court has held as under,

12. "The penalty imposed upon the respondent is an amalgam of minor penalty and major penalty. The respondent has been inflicted with three penalties: (1) reduction to the minimum of the timescale of pay for a period of three years with cumulative effect; (2) loss of seniority; and (3) recovery of 25% of the loss incurred by the Government to the tune of Rs. 74,341.89p. i.e. Rs. 18,585.47p. on account of damage to the Gypsy in 18 (eighteen) equal monthly instalments. Whereas reduction of timescale of pay with cumulative effect is a major penalty within the meaning of clause (v) of Rule 11 of the CCS Rules, loss of seniority and recovery of amount would come within the purview of minor penalty, as envisaged by clauses (iii) and (iii) (a) thereof. The disciplinary authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. Such a course of action could not have been taken in law.

8. The impugned order dated 11.09.2012 would disclose that besides a direction

not to assign any responsible work to the petitioner as a measure of punishment two other penalties have also been inflicted upon the petitioner.

9. A perusal of the relevant provision under Civil Services (Classification, Control and Appeal) Rules, 1930 would disclose that there is no provision which empowers the authority to inflict two major penalty including an order of recovery in one punishment order. I further find that no reason has been assigned by the disciplinary authority for ordering recovery of 30 % of the total loss.

12. In the aforesaid facts and circumstances, therefore, the impugned order of punishment against the petitioner is quashed, leaving it open to the respondents to recover the loss suffered by the department after issuing fresh show cause notice and relevant documents to the petitioner. Accordingly, the writ petition is allowed in the aforesaid term. Consequently, both the I.A. No. 2606 of 2013 & I.A. No. 8818 of 2013 are disposed of.