
(2014) 08 JH CK 0038
In the Jharkhand High Court
Case No : W.P. (S). No. 4384 of 2013

Kali Pada Mahato

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Citation : (2015) 1 JLJR 8

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Sahani, Advocate for the Appellant

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the petitioner and the State.

2. Petitioner was holding the post of District Agriculture Officer, Koderma when he was served with a charge-sheet on 15.2.2011(Annexure-4) which led to the imposition of punishment of withholding of 3 increments with cumulative effect and recovery of a sum of Rs. 1,56,936/- by the impugned notification bearing memo no. 774 dated 15.3.2013 issued by the respondent no. 4, Director (Administration) Agriculture cum Joint Secretary, Agriculture & Cane Development Department, Government of Jharkhand (Annexure-7).

3. The issue involved in the present case can be decided on the short point of law. The relevant material facts for determination of the said issue are enumerated herein below:- The charge-sheet alleged that the petitioner, in the capacity of District Agriculture Officer had demanded for supply of 39000 Quintals of potato seeds under the Alternative Agriculture Scheme-2010, however supply order of 750 Quintals of potato seeds was placed by the department against which 523.95 Quintals of potato seeds were supplied by the supplier. It was reported that out of the said amount received only 340.40 Quintals could be distributed by the petitioner and balance 183.55 Quintals were rotten.

4. Petitioner is said to have given a para wise reply to the charge-sheet inter-alia

defending himself with the explanation that the damage of the potato seeds supplied to Koderma occurred during the transportation itself and further due to big size of the potato seeds, the same were returned back. Petitioner has also explained the said charges by stating that there were not enough cold storage and godown to store the materials. Petitioner also referred to the letter dated 4.10.2010 of the Joint Director of Agriculture, Hazaribag regarding the reasons under which the potato seeds were damaged. Petitioner also took a plea that he took the help of extra departmental agencies to distribute the seeds amongst the cultivators, detail of which has been given in the show cause. Therefore, damage of potato seeds were beyond his control.

5. On these facts when the inquiry was conducted, it is case of the petitioner that no witness was examined to substantiate the allegation against him nor he was provided with such opportunity and the inquiry report was submitted without compliance of Principle of Natural Justice. The Inquiry Officer came to a conclusion that the petitioner failed to return the potato seeds being big in size as he has done in returning 226.50 Quintals of potato seeds and, therefore, he was guilty of dereliction in duty. On other count the petitioner was held guilty for his conduct which led to the loss of Rs. 5,23,117/- to the Government because of damage of potato seeds. Further, the specific ground taken by the petitioner was that neither the copy of the inquiry report was provided to him nor the second show cause notice was issued to him, though the allegations were serious in nature and the punishment imposed thereupon was also major.

6. On this count the stand of the respondents in the earlier counter affidavit were that the punishment have been inflicted after due inquiry against the petitioner after the charges having been found to be proved. The punishment comes under the purview of minor punishment, therefore, no second show cause was required to be called for from the petitioner. Respondents have also referred to category of major punishment in para 8 of their counter affidavit, which according to them do not contemplate punishment of such nature as major punishment in terms of the Service Rules. At para 14 of the counter affidavit, it has been stated that further payment of the seeds to the Haryana Seed Development Corporation Limited, who was the supplier of the said potato seeds has been held up due to the fact that the case was under inquiry. They have also stated that there is no case of revenue loss to the State Government, so far. Therefore, the punishment imposed against the petitioner is justified.

7. When, on the last occasion the matter was argued, a judgment was relied upon by the learned counsel for the petitioner enclosed to his rejoinder rendered in W.P.S. No. 7908 of 2012 dated 25.11.2013 in the case of Brahmdeo Prasad Mandal Vrs. State of Jharkhand & others where in a similar circumstances the punishment of withholding of more than 2 increments and also an order of recovery was quashed by the learned Single Bench of this Court. Learned counsel for the respondent-State was asked to go through the said judgment and file his response on instruction as to whether the case of the petitioner is similarly

situated as that of other person. Today when the matter has been argued, learned counsel for the petitioner has also relied upon another judgment rendered in the case of *Rajendra Kishore Vrs. The State of Jharkhand & others* in W.P.S. No. 4169 of 2013 dated 3.4.2014 wherein also 5 increments were withheld with cumulative effect by the same department of an officer of the rank of Deputy Director, Udyan and also punishment of recovery of an amount of Rs. 1,62,489/- was inflicted upon him. It is submitted that the allegations were similar in nature and the Court on that occasion also quashed the impugned order of punishment as being major punishment which required due observance of the departmental proceeding by serving a second show cause before inflicting punishment in terms of Rule 49(iii) of the Civil Services (Classification, Control and Appeal) Rules, 1930.

8. Learned counsel for the respondent has submitted on written instruction received from the Department of Agriculture and Sugarcane Development through letter no. 2386 dated 7.8.2014 that the case of the present petitioner Kali Pada Mahato is similar to the case of *Brahmdeo Prasad Mandal* in W.P.S. No. 7908 of 2012, the judgment which has been referred to herein above and annexed as Annexure-9 to the rejoinder of the petitioner. The legal issues as culled out from the aforesaid judgment is that under the Disciplinary Rules of 1930, the punishment of withholding of 3 increments with cumulative effect is a major punishment, imposition of which requires due compliance of service of second show cause notice with a copy of the inquiry report before the punishment is imposed. At the same time the order of recovery is also not justified in view of the legal proposition laid down in the case of *Union of India (UOI) and Another Vs. S.C. Parashar*, . In the instant case also the respondents have imposed both the major and minor penalty by the same order. The respondents appears to have considered the contention of the petitioner and come out with stand that his case is similar to that of *Brahmdeo Prasad Mandal* (supra).

9. In such circumstances, the impugned order of punishment bearing memo no. 774 dated 15.3.2013(Annexure-7) cannot sustain in the eye of law and on facts and is accordingly, quashed. However, it would be open for the respondents to take a decision afresh in accordance with law after due compliance of Principle of Natural Justice.

10. The writ petition is allowed in the aforesaid terms.