

(2003) 01 JH CK 0064
In the Jharkhand High Court
Case No : L.P.A. No. 429 of 2002

Kamlesh Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 74

Citation : (2003) 1 JCR 587

Hon'ble Judges : Vinod Kumar Gupta, C.J.;R.K. Merathia, J

Bench : Division Bench

Advocate : A. Allam, for State of Bihar, Umesh Kumar Choubay, for the Appellant; Pradip Modi, G.P.-I, for the Respondent

Final Decision : Allowed

Judgement

1. Vide order passed on 18th September 2001 by Superintendent of Police, Bhagalpur the appellant--writ petitioner was dismissed from service. It is the admitted case of the parties that as on the date of the passing of the aforesaid order (18.9.2001) the appellant-petitioner was serving in Bokaro. In terms of Section 74 of Bihar Reorganization Act, 2000 and in view of the authoritative pronouncement by a Division Bench of this Court in the case of the State of Bihar v. Arvind Vijay Bilung and Ors., reported in (2002) (1) JLJR 697 : 2002 (1) JCR 401 Jhr), with respect to 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 Jharkhand and not the Government of Bihar or the officers of Bihar State even if the subject matter of the charge-sheet relates to a period of time prior to 15th November, 2000. On the ground alone, and no other ground the impugned order passed by the Superintendent of Police, Bhagalpur deserves to be set aside.

2. Since the aforesaid impugned order has been set aside only on the aforesaid technical ground of lack of jurisdiction in Superintendent of Police, Bhagalpur, we direct that Superintendent of Police, Bokaro shall now conclude the departmental

proceedings against the petitioner-appellant in the sense that he shall pass final order in the aforesaid matter. Superintendent of Police, Bokaro shall accordingly proceed from the stage of the passing of the impugned dismissal order by the Superintendent of Police, Bhagalpur in the sense that Superintendent of Police, Bokaro is not required to hold or conduct any additional or further enquiry but shall pass order on the basis of the report of the Enquiry Officer and whatever other material is already available on the file. Of course one opportunity of oral hearing shall be afforded to the appellant-petitioner by Superintendent of Police, Bokaro.

3. Mr. Allam, learned counsel appearing for the State of Bihar undertakes before us to ensure that Superintendent of Police, Bhagalpur or other Police authorities of Bihar Government shall transmit to Superintendent of Police, Bokaro the entire record relating to this case including the report of the Enquiry Officer. According to Mr. Allam this shall be done within four weeks from today. If however, Superintendent of Police, Bokaro does not receive these papers within four weeks from today it shall be open to him to approach this Court with a request for appropriate direction.

4. If on consideration and upon hearing the appellant-writ petitioner and after due application of mind as also on the merits of the case. Superintendent of Police, Bokaro decides to impose the penalty of dismissal upon the appellant-petitioner, this shall date back to 18th September, 2001 Mr. Umesh Kumar Choubay, learned counsel appearing for the appellant is in agreement with this course of action. Actually he is in agreement with the entire course of action that Superintendent of Police, Bokaro be directed to take over disciplinary proceedings and to pass the final order, as suggested by us here-in-above. Because of the nature of the charges against the appellant we also direct that till Superintendent of Police, Bokaro decides the matter finally, the appellant-petitioner shall be deemed to be under suspension. Depending upon the order that Superintendent of Police, Bokaro finally passes, the suspension of the appellant petitioner shall be governed by that order,

5. The appellant-petitioner shall appear before Superintendent of Police, Bokaro for personal hearing along with a copy of this order on 17th February, 2003 at 11 a.m. in his office chamber. If he fails to appear. Superintendent of Police, Bokaro shall be absolved of the obligation to hear him personally in the matter. If however, for any administrative, operational or other reason Superintendent of Police, Bokaro is not in town on that date, he shall ensure that the appellant-petitioner is served a notice for personal appearance on some other day. The matter shall finally be concluded before 30th March, 2003.

6. The appeal is allowed to the extent indicated here-in-above. The judgment of the learned Single Judge is accordingly set aside. No order as to costs.