

(2003) 03 JH CK 0054
In the Jharkhand High Court
Case No : WP (S) No. 60 of 2003

Kewal Singh Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Bihar (Now Jharkhand) Service Code, 1952 — Rule 97
Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 18

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Dhananjay Kr. Dubey, for the Appellant; N. Sharmin, J.C. to Allam and S. Saurabh, J.C. to A.G., for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The case was taken up on 4th March, 2003 when the Court passed the following order :

"It is not in dispute that in respect to the State employees posted within the territory of Jharkhand, the Government of Bihar or its authorities have no jurisdiction to take disciplinary action. At best, it can refer the matter to the State of Jharkhand or the competent authority in the State of Jharkhand.

Prima facie, it appears that the S.P. Koderma vide his order contained in Memo No. 749 dated 24th July, 2002 did not apply his mind independently, but quoted the order as passed by the S.P., Begusarai. Prima facie, he has no such jurisdiction.

By way of last chance, the counsel for the State of Bihar and Jharkhand are granted two weeks" time to answer the question, failing which the case may be disposed of on the next date on the basis of averments as made in the writ petition.

Place the case "For Admission on 26th March, 2003 within twenty cases."

2. It is not in dispute that after the departmental proceeding, the enquiry officer submitted report holding the petitioner guilty of the charges. The petitioner was forwarded the copy of the enquiry report and he submitted his objection in respect to such report. Thereafter, though it was for the disciplinary authority, S.P. Koderma to issue appropriate order, petitioner being posted at Koderma, the order of dismissal passed by S.P. Begusarai was communicated vide Memo dated 10th July. 2002.

3. After reorganization of the State, neither the State of Bihar, nor its authorities including S.P. Begusarai had jurisdiction to take disciplinary action against an employee posted within the territory of Jharkhand, such as petitioner. In this connection, one may refer a decision of the Division Bench of this Court in State of Bihar v. Arvind Vijoy Billing, reported in 2002 (1) LJLR 697.

4. The S.P. Koderma seems to have knowledge that the S.P. Begusarai had no jurisdiction to dismiss the petitioner. In spite of the same, instead of ignoring the order passed by the S.P. Begusarai he concurred with the order of S.P. Begusarai and affirmed the dismissal order, quoting the order of S.P. Begusarai in verbatim. It was communicated to petitioner vide Koderma District Order No. 601/2002 dated 9th July, 2002 having Memo No. 749 dated 24th July, 2002.

5. In the circumstances, the original order passed by S.P., Begusarai communicated vide memo dated 10th July, 2002 (Annexure-1) being without jurisdiction, there was no occasion for the S.P. Koderma to quote the said order and affirm it as made vide Memo No. 749 dated 24th July, 2002.

6. For the said reason, the order of S.P. Begusarai communicated vide Memo dated 10th July, 2002 being without jurisdiction and the order of S.P. Koderma as contained in Memo No. 749 dated 24th July, 2002 having been passed without application of mind affirming the illegal order, both the orders are set aside.

7. In the result, the petitioner stands reinstated. The case is remitted to the S.P. Koderma to take fresh decision in the proceeding in question.

8. At the time of re-joining, the petitioners will submit representation enclosing a copy of this order, charge-sheet, copy of the enquiry report and the copy of reply the petitioner submitted on receipt of the enquiry report.

9. The S.P. Koderma, thereafter, taking into consideration all the relevant records including the records aforesaid as may be submitted, shall pass an appropriate order preferably within two months from the date of receipt/production of a copy of this order.

10. So far as arrears of pay of petitioner for the period he remained out of service is concerned, it may be determined after final order is passed as per Rule 97 of the Bihar (now Jharkhand) Service Code.

11. It will be open to the petitioner to file a fresh representation before S.P. Koderma and he may request that a lesser punishment will suffice in view of

gravity of charges.

12. The competent authority of the State of Bihar/S.P., Begusarai will forward all the records to S.P., Koderma immediately, if not yet forwarded.

13. The writ petition stands disposed of, with the aforesaid observations/directions.