
(2014) 12 JH CK 0070
In the Jharkhand High Court
Case No : W.P. (S) No. 101 of 2011

Lal Babu Paswan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 AJR 638

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Radhey Shyam Pandey and Anand Kumar Sinha, Advocates for the Appellant; Rajesh Kumar, G.P.V, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 07-08-2007 whereby the pension of the petitioner has been withheld, the petitioner has approached this Court. The brief facts of the case are that, the petitioner was appointed on the post of Sub-Inspector of Police on 01-01-1970 and he superannuated from service on 28-02-2007. Initially, the date of birth of the petitioner was recorded in the service book as 28-02-1947 however, the petitioner realising the mistake in his certificate issued by the Bihar School Examination Board, Patna obtained a corrected certificate disclosing his date of birth as 28-02-1949. The petitioner made representation to the respondent-authority and produced the corrected copy of the certificate issued by the Bihar School Examination Board, Patna for correction of his date of birth in the service record from 28.02.1947 to 28-02-1949. After the superannuation of the petitioner from service, a charge-memo was issued to the petitioner on 07-08-2007 and departmental proceeding was initiated against him. Enquiry report dated 16-04-2010 was submitted finding the charges proved against the petitioner. A second show-cause notice was issued to the petitioner however, the petitioner failed to reply to the same. Vide notification dated 26-07-2010-the disciplinary authority passed the order of punishment, with holding pension of the petitioner. An order for registration of a criminal case was also passed by the respondent No. 2.

2. A counter-affidavit has been filed on behalf of the respondents producing the proceeding dated 14-12-2007 of the Bihar School Examination Board, Patna and the communication dated 14-03-2007, which disclose that the petitioner obtained a certificate from the Board fraudulently and the concerned official of the Board was dismissed from service.

3. Heard the learned counsel appearing for the parties.

4. Mr. Radhey Shyam Pandey, the learned counsel appearing for the petitioner submits that, admittedly the petitioner superannuated from service on completion of 60 years of age, on 28.02.2007 and thus, he did not get any benefit from change in the date of birth from 28.07.1947 to 28.02.1949. The proceeding of the Bihar School Examination Board, Patna, copies of which are annexed with the counter-affidavit, does not indicate that the petitioner was granted any opportunity before the Board concluded that the petitioner had obtained a certificate in collusion with the employee of the Board. It is further submitted that the petitioner had only made a request for change in his date of birth which the department had not acceded to and therefore, it cannot be said that the petitioner committed "grave misconduct", a condition precedent for initiating action against a Government employee under the provisions of Rule 43-B of the Jharkhand Pension Rules, 2000.

5. Per contra, Mr. Rajesh Kumar, the learned G.P.V submits that, the petitioner submitted a certificate allegedly issued by the Bihar School Examination Board, Patna which has been found forged and thus, he has committed an offence by producing a forged document. It is further submitted that for arrival at a conclusion in the departmental proceeding whether an employee has committed misconduct or not, the actual benefit received by the employee is immaterial. Since, the petitioner had taken all steps available for getting benefit of extension of 2 years of service, the enquiry officer has rightly found the charges proved against the petitioner. The disciplinary authority after considering the materials on record has passed an order under Rule 43-B of the Jharkhand Pension Rules, 2000 vide notification dated 26.07.2010 which does not call for any interference by this Court.

6. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

7. A perusal of the materials on record indicates that the petitioner has not denied that he produced an allegedly corrected certificate issued by the Bihar School Examination Board, Patna seeking change in his date of birth. The contention of the learned counsel for the petitioner that the petitioner has not received any pecuniary gain, is immaterial. Whether the petitioner was granted opportunity by the Bihar School Examination Board, Patna before arriving at conclusion that the petitioner has obtained a certificate with changed date of birth is also immaterial insofar as, the departmental proceeding against the petitioner is concerned. The test in a departmental proceeding is preponderance

of probability and on the basis of the materials produced during the departmental proceeding the enquiry officer has found the charge framed against the petitioner proved. In *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao,)*, the Hon"ble Supreme Court has held that the High Court exercising the supervisory jurisdiction under Article 226 of the Constitution does not act as an appellate court. It has been reiterated that;

23. "The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.... The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal".

8. The learned counsel appearing for the petitioner has contended that the punishment imposed in the departmental proceeding is disproportionate to the misconduct found proved during the departmental proceeding. I find that the award of punishment to the petitioner for committing a criminal offence cannot be said to be disproportionate to the charge found proved. Moreover, the quantum of punishment is the exclusive domain of the departmental authorities and the Courts can interfere with the quantum of punishment only in those cases in which the punishment awarded to a delinquent employee either shocks conscience of the Court or when it fails the test of reasonableness. I find no merit and accordingly, this writ petition is dismissed. However, it is made clear that dismissal of the writ petition would not cause any prejudice to the petitioner in the pending criminal trial as this Court has not expressed any opinion on the merit of the criminal case which is pending trial.