
(2013) 09 JH CK 0100

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5001 of 2012

Manmohan Lal Sharma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-09-2013

Acts Referred:

Citation : (2014) 2 AJR 191 : (2014) 1 JLJR 105

Hon'ble Judges : Aparesh Kr. Singh, J

Bench : Single Bench

Advocate : Indrajit Sinha and R. Satendra, for the Appellant; Rajesh Kumar, for the Respondent

Judgement

Aparesh Kr. Singh, J.—Heard learned counsel for the parties. The petitioner has approached this Court for seeking quashing of a Notification contained in Memo No. 2749 dated 21.8.2012, Annexure-8 to the writ petition, issued under the signature of Secretary, Food, Civil Supplies and Consumer Affairs Department, Government of Jharkhand. It is the grievance of the petitioner that the said order has been passed in purported exercise of powers under Rule 3(5)(e) of the Bihar Consumer Protection Rules, 1987 (now adopted by Jharkhand) and framed under sub-section (2) of Section 30 of the Consumer Protection Act, 1986 on the ground of his absence from duty from 8.12.2010 to 30.6.2011.

2. According to the petitioner his absence for the period 8.12.2010 till 30.6.2011 cannot be alleged to mean that he has abused his position so as to render his continuance in office prejudicial for the public interest. It is contended on behalf of the petitioner that after being duly selected for such post of member of Consumer Forum, Bokaro under an advertisement, he was appointed as such vide notification as contained in memo No. 1643 dated 23.7.2010, Annexure-1. The impugned notification has been issued without any notice or show cause to the petitioner. It is once again stated on behalf of the petitioner that at the time of appointment the petitioner was not suffering from any disabilities which are prescribed in the order of appointment dated 23.7.2010. The petitioner was later

on implicated in a criminal case being Vigilance P.S. Case No. 68 of 2010. The same was instituted on 6.12.2010 much after his order of appointment. In any case, it has further been stated on behalf of the petitioner that in the said Vigilance Case also the petitioner has been discharged from the alleged charges made under different sections of I.P.C. as also under Prevention of Corruption Act vide order passed by a learned Single Bench of this Court in Criminal Revision No. 893 of 2012 dated 7.8.2013. It is also submitted that on behalf of the petitioner that in the said period of his alleged unauthorized absence, in fact the petitioner's elder brother had died and thereafter due to his own illness he could not recover for quite a long time till he resumed duty from 1st July, 2011 onwards. Learned counsel for the petitioner also relies upon Annexure-7 series, a report prepared by District Supply Officer, Bokaro dated 21.2.2012, vide letter No. 211, wherein it has been stated that the petitioner did not remain in unauthorized absence and his work was found to be satisfactory. The said report was prepared on the direction of the Deputy Commissioner, Bokaro and was also forwarded to the Principal Secretary, Food, Civil Supplies and Consumer Affairs Department, Government of Jharkhand vide letter dated 13.3.2012, Annexure-7.

3. In these circumstances, it is submitted on behalf of the petitioner that the impugned order of termination of the membership of the petitioner from the District Forum, Bokaro is wholly illegal, arbitrary and without any show cause or notice in violation of the principle of natural justice. It, therefore, deserves to be set aside.

4. Learned counsel for the respondent-State has justified the impugned order on the ground that the petitioner had remained in unauthorized absence for a long time from 8.12.2010 to 30.6.2011. It is further submitted by the respondents that in such circumstances when there are no provision to regularize unauthorized leave of such a member of the District Consumer Forum, the respondent-Department has invoked the provision of Rule 3(5)(e) of the Rules of 1987 (supra) to terminate the membership of the petitioner. However, learned counsel for the respondents has not been able to dispute the contention that the said order of termination has been issued without any show cause or notice to the petitioner. The respondents also do not dispute that in the Vigilance case, which was subsequently instituted against the petitioner for certain alleged charges, he has been discharged by an order of learned Single Bench of this Court in Criminal Revision No. 893 of 2012, Annexure-10 to the supplementary affidavit filed on behalf of the petitioner.

5. I have heard counsel for the parties and gone through the relevant materials on record. The petitioner was duly appointed vide Annexure-1, a Notification dated 23.7.2010 on the post of Member, District Forum, Bokaro apart from other persons, who were also appointed. At the time of passing of the said order of appointment dated 23.7.2010 in exercise of power conferred u/s 10(1) of the Consumer Protection Act, 1986, there were no criminal cases pending against the petitioner though such a condition was there that the incumbent should not be

named in a criminal case nor should be convicted. Subsequently, it appears that the petitioner was implicated in a Vigilance P.S. Case No. 68 of 2010 instituted on 6.12.2010 under relevant provision of I.P.C. alongwith the offences under the Prevention of Corruption Act. However, it is also a matter of fact that the petitioner was discharged in the said vigilance case by an order passed in Criminal Revision preferred by him being Criminal Revision No. 893 of 2012 vide judgment dated 7.8.2013, Annexure-10 to the Supplementary Affidavit. It is also not in dispute that the order of termination of the petitioner's membership has been passed without any show cause or notice invoking the provision of Rule 3(5) (e) of the Rules 1987. Relevant provisions of Rule 3 of 1987 Rules are quoted hereunder for better appreciation:--

3. Salaries and other allowances and terms and conditions of the President and Members of the District Forum.--(1) The President of the District Forum shall receive the salary of the District Judge if appointed on whole time basis or an honorarium of Rs. 150/- per day for the sitting if appointed on part-time basis. Other members if sitting on whole-time basis shall receive a consolidated honorarium of Rs. 2,000/- per month and if sitting on part-time basis, a consolidated honorarium of Rs. 100/- per day for the sitting.

(2) The President and the Members of the District Forum shall be entitled for such traveling allowance and daily allowance on official tour as are admissible to Class-I Officer of the State Government.

(3) The salary, honorarium and other allowances shall be defrayed out of the Consolidated Fund of the State Government.

(4) Before appointment, the President and Members of the District Forum shall have to give an undertaking that he does not and will not have any such financial or other interests as is likely to affect prejudicially his functions as a member.

(5) In addition of provisions of Section 10(2), State Government may remove from the office, the President and Members of the District Forum who--

(a) has been adjudged an insolvent, or

(b) has been convicted of an offence which in the opinion of the State Government involves moral turpitude, or

(c) has become physically or mentally incapable of acting as such member, or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member, or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or Members shall not be removed from his office on the ground specified in Clauses (d) and (e) of the sub-rule (5) except on an inquiry held by the State Government in accordance with such procedure as it

may specify in this behalf and finds the member guilty of such ground.

(6) The terms and conditions of the service of the President and the Members of the District Forum shall not be varied to their disadvantage during their tenure of office.

(7) Where any vacancy occurs in the office of the President of the District Forum, the senior most (in order of appointment) member of District Forum, holding office for the time being, shall discharge the functions of the President until a person appointed to fill such a vacancy assumes the office of the President of the District Forum.

(8) When the President of the District Forum is unable to discharge the functions owing to absence, illness or any other cause, the senior most (in order of appointment) member of the District Forum shall discharge the functions of the President until the day on which the President resumes the charge of his functions.

(9) The President or any member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of a organization which has been the subject of any proceeding under the Act during his tenure of a period of 5 years from the date on which he ceases to hold such office.

6. On the other hand, from perusal of inquiry report, Vide Annexure-7 series dated 13.3.2012 and 21.2.2012, it appears that the District Supply Officer did not find the absence of the petitioner as unauthorized. The Inquiry Officer on inquiry from the Chairman of the District Consumer Forum also found his work to be satisfactory. In such circumstances, it cannot be alleged that he has abused his position so as to render his continuance in office prejudicial to the public interest. However, if the rule does not contain provision for regularization of such absence of a member of consumer forum that may not be a ground to invoke Rule 3(5)(e) to allege that the person in question has abused his position to render his continuance in office prejudicial to the public interest. The impugned order also has been passed in violation of principle of natural justice without any notice or show cause, therefore, cannot be sustained in the eye of law. The provisions of Rule 3(5)(e) also stipulate an inquiry in accordance with such procedure as specified to establish the guilt of the member before such exercise of power is to be carried out, which apparently has not been done in the instant case. The impugned Notification dated 21.8.2012, Annexure-8, therefore, cannot be sustained in law as well on facts and, accordingly, it is quashed. Consequently, this writ petition is allowed. The petitioner should be allowed to serve the remaining period of his tenure in the District Consumer Forum, Bokaro but shall not be entitled for any salary for the period he was out of service.