
(2014) 01 JH CK 0071
In the Jharkhand High Court
Case No : W.P. (S) No. 6515 of 2013

Nagendra Thakur

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Constitution of India, 1950 — Article 163, 166

Citation : (2014) 7 AJR 188 : (2014) 3 JLJR 281

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Manoj Tandan, Mr. Shiv Shankar Kumar and Mr. Navin Kumar Singh, Advocate for the Appellant; Nehala Sharmin, J.C. to Sr. S.C. II, Advocate for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the order contained in memo. No. 04/Aa. 1-26/2011-170 dated 15.10.2013, whereby the petitioner has been put under suspension. It has been stated that the petitioner has been sought to be put under suspension in contemplation of the departmental proceeding on the charge of allowing one Ashok Bharti to complete the pending work and adjust the amount given to him as advance for construction of the school building in the year 2006. The petitioner is due to retire on 31st January, 2014 and only in order to malign him and obstruct payment of his retrial benefits, the petitioner has been illegally put under suspension in hot haste at the fag end of his service. The order of suspension has been issued by the Deputy Secretary who is neither appointing authority nor disciplinary authority. He has no jurisdiction to issue such order. The petitioner is a senior most Class-I officer in his department. His appointing authority is the State of Jharkhand. The order is violative of the provisions of Article 166 of the Constitution of India read with Rules of Executive Business framed under Article 163 of the Constitution.

2. Mr. Manoj Tandan, learned counsel appearing on behalf of the petitioner submitted that under Article 166 of the Constitution of India all executive action of the Government of the State shall be expressed to be taken in the name of the Governor and shall be authenticated in the manner as specified in the Rule to be made by the Governor. The impugned order of suspension has not been authenticated in the prescribed manner and the same is wholly illegal.

3. The petitioner in the writ petition has specifically mentioned the said infirmity in the order in Paragraph Nos. 17 and 22 of the writ petition, but the same has not been controverted in the counter affidavit of the respondents.

4. He further submitted that the Deputy Secretary to the Government has no jurisdiction to issue such order without authentication in the specified manner and the order is a nullity and without jurisdiction.

5. Learned J.C. to Sr. S.C. II opposed the writ petition and supported the impugned order.

6. Learned counsel submitted that though there is no specific reply to paragraph Nos. 1/and 22 of the writ petition, the opening line of the impugned order shows that the matter was well within the knowledge of the Governor. The order cannot be said to be bad and illegal only for want of proper expression regarding authentication of the order.

7. I have heard learned counsel for the parties and considered their submissions. I also perused the impugned order and other material on record.

8. I find that the impugned order has been issued by the Deputy Secretary to the Government. The order does not show that the same has been issued by the order of the Governor. There is nothing on record to demonstrate that the order is authenticated in the manner specified by the rule to be made by the Governor. Admittedly, the petitioner is a Class-I officer of the Education Department holding the post of Regional Deputy Director of Education and he is governed by the Civil Services (Classification, Control and Appeals) Rules, 1930 (hereinafter to be referred as the said Rules).

9. Rule 49A of the said Rules, which deals with the power of suspension, runs thus:-

49.A. (1) The appointing authority or any authority to which it is subordinate or the Governor by general or special order, may place a Government servant under suspension-

(a) where disciplinary proceeding against him is contemplated or is pending or,

(b) where a case against him in respect to any criminal offence is under investigation, inquiry or trial.

10. The petitioner has made out an specific ground that the order has neither been issued by the appointing authority or the authority under which he is

subordinate nor there is general or special order of the Governor for putting the petitioner under suspension. The order is, thus, violative of Rule 49-A(1) of the said Rules.

11. In Naveen Kumar Singh Vs. Jharkhand State Electricity Board and Others, this Court has held that if suspension order has not been passed either by the appointing authority or an authority higher than the appointing authority, that order is without jurisdiction.

12. Further, the petitioner is a Class-I officer and the State Government is the appointing authority. According to Article 166 of the Constitution, all executive action of the Government shall be expressed to be taken in the name of the Governor and shall be authenticated in the manner specified in the Rules made by the Governor.

13. The impugned order has not been issued by the order of the Governor nor there is anything on record to show that it has been authenticated in the specified manner. The order, thus, contravenes the provision of Article 166 of the Constitution of India as well.

14. For the reasons aforesaid, the order contained in memo. No. 04/Aa. 1-26/2011-170 dated 15.10.2013 cannot sustain in law and the same is quashed. This writ petition is allowed.