

(2009) 12 JH CK 0023
In the Jharkhand High Court

Nand Kishore Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Citation : (2009) 12 JH CK 0023

Hon'ble Judges : Gyan Sudha Mishra, C.J.;Rakesh Ranjan Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the order dated 28.5.2009 passed by the learned Single Judge in CWJC No. 4097/2000(R), by which the writ petition filed by the petitioner/appellant herein challenging the order of his dismissal from service was rejected. Consequently the order of dismissal stood confirmed and hence, this appeal has been preferred against the order of the learned Single Judge.

2. The admitted facts of this case indicate that the appellant had been served with a memorandum of charge alleging that he hatched a conspiracy for making illegal appointments after committing forgery and interpolation and also made payments harassing his junior staff and teachers and thereafter remained unauthorizedly absent. A notice was issued to the delinquent appellant and in response to the notice, he had appeared to participate in the enquiry. He, however, has come up with his defence case that although he was served with the show cause, after which he also appeared and participated in the enquiry, the enquiry did not proceed on the date when he had appeared and a fresh date of enquiry was not communicated to him when the enquiry was finally held against him. Consequently the enquiry stood concluded as an ex parte proceeding, after which maximum punishment of dismissal from service was passed by the disciplinary authority.

3. The appellant felt aggrieved with the order of dismissal and hence he filed a

writ petition bearing CWJC No. 2851/1999R, which was disposed of by the order dated 21.1.2000, wherein the learned Single Judge was pleased to grant liberty to the appellant to approach the appellate forum challenging the order of his dismissal. The appellate authority was directed to grant opportunity of hearing to the appellant before the order of dismissal was given effect to. The petitioner/appellant submitted himself to this order and did not prefer any appeal against the judgment of the learned Single Judge contending that he should have been directed not merely to approach the appellate authority assailing the order of dismissal, but a de novo enquiry regarding the charges levelled against him should have been initiated. Instead of filing any appeal, he appeared before the appellate authority where he got sufficient opportunity to defend himself and assail the order of his dismissal. However, the appellate authority was pleased to uphold the findings recorded in the enquiry proceedings and thus, the order of dismissal was confirmed by the appellate authority.

4. The appellant thereafter filed another writ petition bearing CWJC No. 4097/2000R, out of which this appeal arises and therein the petitioner/appellant contended that the enquiry, which was held against him, was an ex parte enquiry and therefore, the order of dismissal ought to be quashed and set aside, since adequate opportunity of hearing was not granted to him. He further contended that in any case, the appellate authority was not authorized to impose maximum punishment of dismissal from service. However, the learned Single Judge, on appreciation of the contentions raised on behalf of the appellant, was pleased to dismiss the writ petition and hence, this appeal.

5. It appears from the impugned judgment and order that the petitioner/appellant had essentially challenged the order of dismissal questioning the legal competence of the competent authority as to whether he was authorized to pass the order of dismissal, but in course of argument, the scope of appeal was expanded and it was submitted by the Counsel for the appellant that the delinquent appellant did not get sufficient opportunity to defend himself for although he had notice regarding the enquiry proceeding, he was not apprised of the actual date of hearing, due to which he could not participate in the proceeding. This contention although is not mentioned in the impugned judgment and order, yet we granted opportunity to the Counsel for the appellant to address us on this aspect also and while considering this plea, it could be instantly noticed and could not be ignored that the appellant had already assailed the action of the respondents on the ground that sufficient opportunity of hearing was not granted to him. However, it could not be overlooked that the petitioner/appellant had already raised this question in his earlier writ petition referred to hereinbefore, where he had challenged the enquiry proceeding on the ground that sufficient opportunity of defending himself was not made available to him as the next date of the proceeding was not communicated to him. However, the Counsel for the appellant is clearly missing that this plea had already been taken in the earlier writ petition, when the learned Single Judge on the earlier occasion in CWJC No. 2851/1999R had granted liberty to the petitioner to approach the

appellate authority questioning his dismissal and the appellate authority was directed to grant opportunity to the appellant to assail the order of his dismissal and the findings recorded in the enquiry proceeding. The appellant acquiesced with this order and thereafter was also granted opportunity by the appellate authority.

6. Having submitted to the jurisdiction of the appellate authority in pursuance to the order passed by the learned Single Judge, he obviously cannot be allowed to turn around and submit that the enquiry should have been started de novo. In fact, if the delinquent appellant had assailed the order passed by the Single Bench when the writ petition was disposed of in the year 2000 in order to contend that a de novo enquiry should be held, perhaps it would have been available for the delinquent appellant to contend that a de novo enquiry should have been started and not merely an opportunity of hearing at the stage of appeal. But the appellant did not take recourse to this submission and submitted to the jurisdiction of the appellate authority. This clearly operates as an estoppel against the appellant at this stage to contend that a de novo enquiry should have been held and not merely an opportunity of hearing at the stage of appeal. In fact, we may state that this submission was only vaguely urged by the petitioner/appellant before the learned Single Judge and the learned Single Judge had also brushed aside the submission of the Counsel for the appellant regarding non-availability of the opportunity of hearing to the appellant and non-compliance of the principle of natural justice and thus, it cannot be allowed to be urged, as the appellant had full opportunity to defend himself in regard to the illegal appointments made by him at least before the appellate forum and it is also not evident from the record that the appellant had no communication in regard to the date of enquiry proceeding. Besides this, the copy of enquiry report was also made available to the appellant when he appeared before the appellate forum. Thus, his plea that the opportunity of hearing was denied to him before imposing the punishment of dismissal, has no substance.

7. The appeal, therefore, is dismissed at the admission stage itself.