

(2009) 06 JH CK 0026
In the Jharkhand High Court

Nandlal Pandit

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 06 JH CK 0026

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—The present petition has been preferred against an order passed by respondent No. 4 dated 28th of March, 2003 (Annexure-9 to the memo of the present petition) whereby the benefit of salary has been withdrawn which was given to the petitioner due to his promotion as a Headmaster. It is alleged by respondents that promotion was wrongly given to the petitioner. This conclusion was arrived at by respondent No. 4 on the basis of a report given by Accountant General Office, but, without giving any opportunity of being heard to the petitioner. Therefore, it has been challenged by way of writ petition under Article 226 of the Constitution of India.

2. It is submitted by the counsel for the petitioner that the impugned order at Annexure-9 passed by respondent No. 4 dated 28th March, 2003 is without any application of mind. In fact, report given by the Accountant General, which is at Annexure-7 to the memo of the present petition reveals the fact that because of want of documents it is not clear about the present petitioner's qualification etc. and therefore, promotion given to the present petitioner was illegal. It is also submitted by the counsel for the petitioner that looking to the affidavit in reply filed by the respondents also it has been admitted fact that no documents were supplied by the concerned respondent authorities to the audit party of the respondents and therefore, if an opportunity of being heard would have been given to the present petitioner by the concerned respondent authorities, it could have been pointed out by petitioner that the present petitioner was correctly

promoted by order dated 15th May, 1989 on the post of Headmaster w.e.f. 1st January, 1988. It has submitted by the counsel for the petitioner that neither the office of the Accountant General has given any opportunity of being heard to the petitioner nor the other respondents have given any opportunity of being heard to the petitioner and an ex-parte conclusion has been arrived at by the respondents about the promotion of the present petitioner. Thus, there is a gross violation of the principles of natural justice before passing the impugned order at Annexure-9 to the memo of the present petition by respondent No. 4 dated 28th of March, 2003 and the same deserves to be quashed and set aside.

3. I have heard counsel for the respondents-State, who has submitted that the order is passed by respondent No. 4 at Annexure-9 was on the basis of report given by the Accountant General Office and as per the report of the Accountant General Office, promotion given to the present petitioner on the post of Headmaster was wrong and illegal and therefore, the order of recovery was passed at Annexure-9 to the memo of the present petition. It is also submitted by the counsel for the respondents-State that once the report of the Accountant General was given, it has to be implemented by the State and therefore, order at Annexure-9 has been passed by the respondent No. 4 and therefore, the petition deserves to be dismissed.

4. I have heard counsel for the respondent No. 5, who has drawn the attention of this Court to paragraph Nos. 6, 7, 10 & 11 of his counter affidavit, which read as under:

6. That at the outset it is stated and submitted that the inspection report contains initial audit findings which are taken up with the appropriate authorities in the concerned department/organization for their comments/ clarifications/ remedial actions and thereafter the final finding of the audit will be incorporated in the Audit Report. The observations mentioned in Audit memos/statement of fact, Inspection Report etc. are unpublished official records and are not final findings of the audit as such no testimony can be given on them. The office of the answering respondent, thus, is not a proper and necessary party at this stage and hence prays for deletion.

7. That so far merit of case is concerned it is stated and submitted that the Audit suggested that the higher authorities must investigate the matter and thereafter recoveries, if any, may be made from the concerned officials.

10. That it is also pertinent to state and submit, besides the promotion from retrospective effect, the promotion of the petitioner to the post of Headmaster with effect from 1.1.1988 by District Superintendent of Education, Sahebganj by his letter No. 4554-56 dated 15.5.1989, is also illegal on the ground that as per report dated 25.6.1996 of the District Estt. Committee, which was authorised to grant promotion, the petitioner was junior in the seniority list. In spite of repeated reminders for submission of seniority list and concerned file of approval of District Establishment Committee by which the petitioner was recommended for

promotion and other related documents were not made available to the audit by the District Superintendent of Education, Pakur. The Deputy Commissioner, Pakur was also informed for the same even then the documents were not produced before the Audit party.

11. That it is stated that the office of the answering respondent, on the basis of the documents produced by the auditee has merely pointed out the illegality and irregularity in the Inspection Report and suggested that matter may be investigated by the higher authorities, responsibilities may be fixed and recoverable amount, may be recovered under intimation from the concerned officials.

(Emphasis Supplied)

In view of the aforesaid submission, it appears that never a final report was given by the Accountant General Office. It is also clearer from the submission of the counsel for the respondent No. 5 as well as from the counter affidavit filed by respondent No. 5 that a direction was never given to the State co straightway deduct the amount. Looking to the aforesaid paragraphs of the counter affidavit, especially looking to the paragraph Nos. 7 and 11, it was suggested by the Accountant General Office that matter may be investigated, enquiry may be conducted and therefore, action may be initiated, but it appears that respondent Nos. 1 to 4 has never applied their mind at all upon the report of respondent No. 5-Accountant General Office. It was never insisted by the Accountant General Office that the report is conclusive piece of evidence. On the contrary, very cautiously, guardedly and legally it has been suggested by the report of the Accountant General Office that in absence of documents from District Superintendent of Education, Pakur, enquiry should be made and thereafter, amount can be deducted. Report of the Accountant General office is a mere suggestion. It is meant for awakening the senses of the respondent authorities so that upon holding proper enquiry, necessary action may be initiated against the present petitioner. This aspect of the matter has not been properly appreciated by the respondent Nos. 1 to 4 and straightway, ex-parte an order at Annexure-9 has been passed by respondent No. 4. Even previously also orders have been passed in Writ Petitions that whenever report of the Accountant General Office is given for deduction of any benefit, the principles of natural justice ought to have been followed by the State authorities. Straightway, there cannot be a recovery on the basis of Accountant General's Office report. Procedure established by law ought to be followed before taking away any benefit and at least principles of natural justice must be followed and observed despite there being a report given by the Accountant General Office. It appears that State authority is always straightway implementing the report given by the Accountant General office, without giving any opportunity of being heard to the concerned persons. In fact, in the present case also, no show cause notice, no hearing, much less an opportunity of being heard was given to the petitioner and as stated hereinabove even affidavit filed by the Accountant General Office

reveals the fact that the report given by the Accountant General there suggestion and matter must be enquire into by the concerned respondent department and thereafter only the action must be initiated.

5. As a cumulative effect of the aforesaid facts and reasons and counter affidavit filed by the respondent No. 5, I hereby quash and set aside the order passed by respondent No. 4 dated 28th of March, 2003 at Annexure-9 to the memo of the present petition.

6. I also direct the Registry of this Court to send a copy of this order to the Chief Secretary of the State of Jharkhand so that he shall issue a Circular to all the concerned subordinate officers that whenever there is a report of the office of the Accountant General for deduction, withdrawal or taking away any benefit given to the employee of the respondent-State, then the same may not be implemented straightway like a decree of a court, but, it should be implemented at least after following principles of natural justice. Report given by Accountant General Office can never be executed like a decree of competent court. It is never a conclusive piece of evidence and an opportunity of being heard ought to have been given to the person concern. Even counsel who is appearing on behalf of the Accountant General Office has also submitted that they are never insisting that the procedure, establishment by law or principles of natural justice should never be followed. In view of this repeated errors on be half of the State of Jharkhand, the aforesaid directions is given to the Chief Secretary so that he shall issue a necessary Circulars/Orders so as to avoid multifariousness of the petitions. I also direct the Chief Secretary of the State of Jharkhand that the aforesaid Circulars/Orders shall be issued within a period of twelve weeks from the date of receipt of a copy of this order and the same shall be supplied to this Court also.

7. I hereby also direct the Registry to enlist this matter, even though it is disposed of, on 1st December, 2009 under the heading "For Compliance of the Order".

8. In view of the aforesaid directions, this writ petition stands disposed of.