

(2003) 12 JH CK 0061
In the Jharkhand High Court
Case No : WP (S) No. 4033 of 2003

Niranjan Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Constitution of India, 1950 — Article 166(1), 266

Citation : (2004) 1 JCR 176

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Mihir Kumar Jha, Mrinal Kanti Roy and Gouri Shankar Prasad, for the Appellant; R.N. Sahay, Sr. SC-II, Jyoti Prasad Sinha and Rabindra Prasad, JCs to Sr. SC, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—In both the cases, as common question of law is involved and similar Notifications of suspension both dated 30th July, 2003 (Notification Nos. 6211 and 6212) are under challenge, they were heard together and are being disposed of by this common judgment

2. The petitioner, Niranjan Jha of WP (S) 4033 of 2003 while posted as Assistant Engineer, Rural Development Department, Ranchi, Special Division, Jamtara has been suspended by Notification No. 6212, dated 30th July, 2003 issued from the Rural Development Department of State of Jharkhand in contemplation of a departmental proceeding.

The other petitioner, Yadunandan Das of WP (S) No. 4037 of 2003 while posted as Superintending Engineer, Rural Development, Special Circle, Hazaribagh has been suspended, vide Notification No. 6212, dated 30th July, 2003 issued from the Rural Development Department of State of Jharkhand.

3. The counsel for the petitioners attacked the orders of suspension on two grounds, namely, (i) the parent department of petitioners being Water Resources

Department and both the petitioners being posted on deputation in Panchayati Raj and NREP (Special) Department of State of Jharkhand, the State Government from its Rural Development Department has no jurisdiction to suspend the petitioners; and (ii) the orders of suspension are mala fide having issued at the instance of the respondents Sanjay Kumar Pandey and Shambhu Sharan Singh President and Secretary of Bharatiya Janata Party Pandu Unit, Palamau.

Though the petitioners have alleged mala fide against the private respondents, as named above, taken plea that the order of suspension have been issued at their instance, but no specific instance has been cited nor any evidence enclosed with any of the writ petitions to hold mala fide against the respondents aforesaid.

4. The counsel for the petitioners submitted that the best proof of mala fide can be seen from File No. VI-3 AA-194/03 which deals with suspension of petitioners, if the Court calls for the aforesaid file. It was suggested that the, petitioners were suspended on account of political patronage to the party workers of BJP ruled Government, the petitioners have been placed under suspension against all known norms of Governmental decisions making process.

5. Keeping in view the anxiety of petitioners and confidence bestowed on the counsel, the Court felt it desirable to have the relevant file which the respondents produced.

On perusal of the said file it appears that the Chief Minister, Jharkhand visited Daltonganj on 8th May, 2003. Some of the BJP activists, namely, the private respondents herein submitted a complaint letter before the Chief Minister alleging irregularities committed during performance of certain works. It was pointed out that the irregularities were brought to the notice of the Government by some Assembly Members at the time of call attention motion in the Assembly. Thereafter, the Executive Engineer, R.E.O. Works Division, Daltonganj and Executive Engineer, Road Division, Daltonganj made joint inspection of the work. From the enquiry report and the report of the Executive Agency, it transpires that the proposed Bridge was not constructed by petitioners in one place as per approval but at two different places. The approval was given by the Deputy Commissioner, Palamau to construct Bridge at one place.

The Chief Minister, Jharkhand after taking into consideration the fact; orally ordered to suspend the petitioners, wherein-after the file moved. A detailed reasoned order was passed by the Chief Minister, Jharkhand on 28th July, 2003, who ordered to enquire into the matter through the Vigilance Department, The file routed in the Rural Development Department, but subsequently, it was placed before the Panchayati Raj & NREP (Special) Department. The Secretaries of both the Departments taking into consideration the note given by one or other Officer and the report submitted, ordered to suspend the petitioners. Thereafter, the file was sent to the Rural Development Department, Jharkhand wherein draft notification was prepared and orders of suspension were issued after taking approval of the Commissioner and Secretary of the Department.

6. The aforesaid fact only suggests that the Chief Minister being the Head of the Executive only ordered to suspend the erring officers, whereinafter the file moved from one Officer to another and after taking into consideration the relevant fact, the Secretary of the Department ordered to suspend the petitioners.

7. The aforesaid action cannot be alleged to be mala fide merely because the complainants belong to a Ruling Political Party.

8. To determine the question of jurisdiction of Department to suspend the petitioners, one is to notice certain facts, as mentioned hereunder.

9. The parent department of the petitioners, namely, Water Resources Department of the Combined State of Bihar issued a Notification No. 5/KA E-10-01/ 98-1320/Patna, dated 23rd May, 1998 whereby it was decided transfer 65 Divisions, 14 Circles and 2 Offices of Chief Engineers along with the posts under the Rural Development Department of the State on certain conditions. It was decided to keep those 65 Divisions, 14 Circles and two Offices of Chief Engineers dormant under the Water Resources Department and to complete the formalities of transfers of those Officers with employees to the Rural Development Department within certain period. While the Water Resources Department remained the parent cadre and officers/ employees were treated to be on deputation in the Rural Development Department, it was made clear that the Rural Development Department will be competent Department to take disciplinary action or to grant sanction for prosecution against the officers/ employees who will be on deputation being posted in those Divisions, Circles and Offices of the Chief Engineers.

10. After reorganization of the State and creation of the State of Jharkhand, the Divisions, Circles and the Chief Engineers" Offices which fell within the territory of Jharkhand continued to function under the Rural Development Department of the State of Jharkhand.

11. It is not in dispute that the Rural Development Department of State of Jharkhand is still in existence, but it appears from the writ petitions and counter affidavits that a new department, namely, Panchayati Raj and NREP (Special) has been created in the State of Jharkhand.

12. According to the petitioners, the Office of the Superintending Engineer, Rural Development Special Circle, Hazaribagh or the Office of the Assistant Engineer, Rural Development Special Division, Jamtara has been carved out of Rural Development Department and placed under the Panchayati Raj & NREP (Special) Department. On this pretext, their stand is that the Rural Development Department has now no jurisdiction to suspend them.

13. The counsel for the petitioners in support of claim relied on the Notification No. 4902, dated 29th June, 2003 issued by the Panchayati Raj and NREP (Special) Department, where by the petitioner Niranjan Jha was posted as

Assistant Engineer, Rural Development Special Division Jamtara and Notification No. 5969, dated 18th July, 2003 issued from the Panchayati Raj and NREP (Special) Department, whereby the petitioner Yadunandan Das was posted as Superintending Engineer, Rural Development Special Circle, Hazaribagh on his promotion.

14. But the aforesaid plea cannot be accepted if certain other facts are taken into consideration and grounds taken by respondents:

As per respondents, the Panchayati Raj & NREP (Special) Department has come into existence on 31st March, 2003, on which date a Minister of Cabinet Rank has been assigned with the portfolio of the said Department. Subsequently, on 29th April, 2003, the Commissioner-cum-Secretary for the Department of Panchayati Raj & NREP (Special) Department has been posted.

There is nothing on the record to suggest that the Divisions, Circles or the Chief Engineers' Offices which were made dormant in the Irrigation Department, carved out and placed under the control of the Rural Development Department, vide Notification No. 1320, dated 23rd May, 1998, including the Rural Development Special Circle, Hazaribagh, were again taken out/carved out from the Rural Development Department and placed under the Panchayati Raj & NREP (Special) Department, Jharkhand.

15. On the other hand, from the Notification No. 2530, dated 24th May, 2003 issued from the Water Resources Department, Government of Jharkhand, whereby petitioner Yadunandan Das was promoted and posted as Superintending Engineer, it will be evident that his service was in the Rural Development Department of Government of Jharkhand and on promotion he was again posted as superintending Engineer under the Rural Development Department on retirement of one Triloki Nath Prasad Gupta.

16. In the aforesaid circumstances, the petitioners cannot derive any benefit of Notification of posting issued in respect to them on 29th June, 2003/ or 18th July, 2003 by the Panchayati Raj & NREP (Special) Department. The Divisions/or Circles where they have been posted are still within the Rural Development Department having not been carved out and having not placed under the control of Panchayati Raj & NREP (Special) Department.

17. In this background, if the file originally moved and placed under the Rural Development Department, the Secretary of the newly created department, namely, Panchayati Raj & NREP (Special) Department gave its opinion and referred back the matter to the Rural Development Department, under which Divisions/Circles are existing, it cannot be held illegal being in accordance with the Rules of Executive Business of the State.

The formality of expression of executive action as stipulated under Clause (1) of Article 166 of the Constitution of India is directory. The Court is only to see whether the substance of its requirement has been complied or not.

18. In the aforesaid background, the circles/divisions where the petitioners have been posted, having carved out from Water Resources Department and having placed under the Rural Development Department, no subsequent order having been issued carving out these two Circles/Divisions from Rural Development Department and placing these Offices under the Panchayati Raj & NREP (Special) Department, the Rural Development Department having been delegated with the power to take disciplinary action by the Notification dated 23rd May, 1998 the said position having not yet changed, it is well within the jurisdiction of the Rural Development Department of the State to issue order of suspension of petitioners.

Further, both the orders having issued "By the order of the Governor of Jharkhand" under the signature of Deputy Secretary, Rural Development Department, they fulfill the requirements under the Rules of Executive Business.

19. For the reasons aforesaid and there being no merit, the question of interference with the orders of suspension does not arise.

20. Both the writ petitions are dismissed.