

(2010) 10 JH CK 0007

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4343 of 2010

Praveen Kumar Goagrai

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Citation : (2011) 1 JCR 408 : (2011) 1 JLJR 227

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—The Petitioner while was posted as Sub-Divisional Officer, Ramgarh, some complaints were made against him of not holding the Court regularly. On receiving such complaint, the Deputy Commissioner, Ramgarh, vide its letter No. 778 dated 22.11.2008 directed the Petitioner to hold Court regularly but the Petitioner allegedly did not comply that order. Thereupon, the Deputy Commissioner. Ramgarh, vide its letter dated 1.12.2008 issued a notice to the Petitioner to show cause as to why not the earlier order was complied with which, according to the case of the Respondents, was replied in a very undisciplined manner wherein it was stated that holding of the Court is the personal responsibility of the Sub-Divisional Officer and, hence, any direction in the manner is unwarranted. However, the Petitioner by submitting second show cause expressed his mistake committed in submitting his show cause. Thereupon, the Deputy Commissioner made recommendation for taking disciplinary action for dereliction of the duty and also for disobedience of the order of the higher authority. Thereafter the Respondent No. 3. Joint Secretary, Personnel and Administrative Reforms Department, Government of Jharkhand issued a letter dated 5.5.2009 to the Petitioner calling upon him to submit his explanation on the report, copy of which was enclosed with the letter. Pursuant to that, the Petitioner submitted his explanation denying all the charges levelled against him which was forwarded before the Deputy Commissioner. Ramgarh for

his opinion, who after considering the explanation, did find the explanation to be unsatisfactory. Thereupon, the Disciplinary Authority found the explanation to be unsatisfactory, passed an order of stoppage of two increments with cumulative effect, vide its order as contained in notification No. 2504 dated 30.4.2010 which order has been sought to be challenged by way of this writ application on the ground that the said punishment of stoppage of two increments with cumulative effect being major punishment cannot be inflicted without drawing a regular departmental proceeding and hence, the order/notification No. 2504 dated 30.4.2010 as contained in Annexure 5 is fit to be set aside.

2. Mr. R. Krishna, learned Counsel appearing for the Petitioner by referring decision rendered in a case of Kulwant Singh Gill Vs. State of Punjab, and in the case of Rang Nath Rai and Ors. v. State of Bihar 1997 (2) PLJR 421, submitted that in view of the stoppage of two increments with cumulative effect being a major punishment one cannot be inflicted with such punishment without drawing a regular proceeding and hence, the said order being quite illegal is fit to be set aside.

3. A counter-affidavit has been filed wherein by referring Rule 168 of the Board of Miscellaneous Rules, it has been pleaded that stoppage of increment being minor punishment can be inflicted against delinquent without drawing a regular proceeding.

4. From perusal of the provision as contained in Rule 168 of the Board of Miscellaneous Rules, I do find that it simply stipulates that the punishment of censor, stoppage of increment and promotion can be passed after giving due opportunity to the delinquent to have his say in the matter of allegation without drawing a regular departmental proceeding.

5. It be noted that it speaks about the stoppage of increment apart from other punishments mentioned above but it never speaks about the stoppage of increment with cumulative effect which is a major punishment in view of the ratio laid down in a case of (supra) and in the case of (supra) and therefore, one cannot be inflicted with major punishment without having a regular departmental proceeding. Admittedly in the instant case, the Petitioner had never been put on a departmental proceeding and still punishments, one of which is a major punishment, has been awarded which is against the Constitutional Mandate and hence, the order, as contained in Memo No. 2504 dated 30.4.2010 (Annexure 5) is hereby quashed. However, the authority would be at liberty to proceed with the matter relating to charges in accordance with law.

6. In the result, this application is allowed. Application allowed.