

(2009) 03 JH CK 0064
In the Jharkhand High Court

Project and Development India Pvt. Ltd.	APPELLANT
Vs	
Sri Rajnath Singh	RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2009) 2 JCR 317

Hon'ble Judges : Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This appeal is directed against the order dated 7.8.2006 passed by learned single Judge in W.P. (S) No. 2531 of 2004 whereby the order dated 13.10.2003 under which the writ petitioner/respondent herein was reverted to his substantive post of Chargeman retrospectively and the emoluments drawn by him sought to be recovered with interest was set aside.

2. The facts giving rise this appeal are that a departmental proceeding was initiated against the respondent, an employee of the appellant's company, on the charge of securing promotion on the basis of fabricated education certificate. On completion of enquiry, the enquiry officer submitted its report dated 21.5.2002 to the disciplinary authority. However, before the disciplinary authority could take any decision on the enquiry report, the writ petitioner applied for VRS which was accepted and was released from service on 2.5.2003. Thereupon the disciplinary authority passed the final order on 13.10.2003 whereby the writ petitioner was reverted to his substantive post of Chargeman.

3. Being aggrieved with that order, the writ petitioner-respondent challenged the same before this Court in W.P. (S) No. 2531 of 2004.

4. This Court having found the order being bad quashed it for the reason that said order had been passed after cessation of the relationship of employer and employee.

5. Being aggrieved with that order, this appeal has been filed.

6. Learned Counsel appearing for the appellant while assailing the order did submit that the learned single Judge found the order dated 13.10.2003 reverting the petitioner-respondent to his substantive post to be bad on the assumption that there has been no rule entitling the disciplinary authority to proceed with the matter relating to the departmental proceeding even after retirement of an employee but, in fact, Rule 30-A of the Employees' (Conduct, Discipline and Appeal) Rules, 1987 does prescribe for continuance of the proceeding even after the retirement of delinquent and as such, the findings of learned single Judge in this regard that no rule or law has been brought to notice which permits continuance of disciplinary proceeding beyond the date of retirement is based on apparent error of record.

7. Learned Counsel in order to strengthen his submission did submit that, in fact, such averment relating to continuance of the proceeding had been made in the counter affidavit but the learned single Judge while passing the impugned order overlooked it and as such, the impugned order is fit to be set aside.

8. As against this, learned Counsel appearing for the respondent submitted that the enquiry officer proceeded with the ? enquiry ex-parte and as such, any order passed by the disciplinary authority on the report of the enquiry officer can certainly be said to be bad. However, this contention of the appellant was countered on behalf of the appellant by submitting that when the respondent absented himself from the proceeding of the enquiry, notices were issued repeatedly but the respondent ignored it and therefore, notice was published in the newspaper and as such order does not suffer from any illegality.

9. Having heard learned Counsel appearing for the parties, it does appear that the learned single Judge passed the impugned order on the assumption that there has been no rule entitling the disciplinary authority to proceed with the matter relating to the departmental proceeding after the employee gets retired but, in fact, Rule 30-A of the Employees' (Conduct, Discipline and Appeal) Rules, 1987 does prescribe for continuance of the proceeding which for better appreciation of the case is being re- produced hereunder:

Rule 30-A (i) Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

10. The said rule is quite specific about continuance of the proceeding even if delinquent gets retired if the proceeding has been initiated in course of service of the delinquent. In this view of the matter, we hold that the impugned order passed by the learned single Judge in W.P. (S) No. 2531 of 2004 cannot be sustained. Since it is based on error of record and against the specific rule provided for that purpose, consequently the finding of the learned single Judge in

this regard is hereby set aside.

11. Yet the writ petitioner is entitled to relief what has been granted to him in the said writ petition as the order dated 13.10.2003 is otherwise unsustainable in the eye of law.

12. Admittedly, under the order dated 13.10.2003 respondent was reverted to his substantive post which in terms of Rule 27 of the Employees' (Conduct, Discipline and Appeal) Rules, 1987 is a major penalty, yet copy of the enquiry report was admittedly never served before inflicting punishment which entails evil consequences as the order of reversion never seems to be simplicitor and as such, the order dated 13.10.2003 seems to be in violation of Article 311 Sub-clause (2) of the Constitution of India. Under this situation, impugned order needs not be reversed. Thus, we do not find any merit in this appeal. Accordingly, this appeal is dismissed.

Amareshwar Sahay, J.

13. I agree.