
(2014) 04 JH CK 0076
In the Jharkhand High Court
Case No : W.P. (S) No. 4169 of 2013

Rajendra Kishore

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Citation : (2014) 2 JLJR 419

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : P.A.S. Pati, Advocate for the Appellant

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner has been imposed with a punishment by notification No. 1862 dated 3rd June 2013 issued under the signature of the respondent No. 4-Deputy Secretary, Department of Agriculture & Cane Development, Government of Jharkhand, whereunder five increments have been withheld with cumulative effect and it has also been ordered that an amount of Rs. 1,62,489/- be recovered from the salary of the petitioner in monthly installments and such monthly installment shall be equal to half of the monthly salary of the petitioner. If the petitioner retires before full recovery of the amount, balance amount will be recovered from payable due/amount paid against gratuity/earned leave encashment.

2. Counsel for the petitioner has assailed the impugned order inter alia on the following grounds:--

(i) that the punishment of withholding of five increments is in the nature of major penalty which has been imposed without following the prescribed procedure under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930,

(ii) that the petitioner has neither been served with any second show-cause

notice, nor furnished with a copy of the inquiry report before passing the order of punishment,

(iii) that there has been no real loss to the Government as no payments have been made to Haryana Seeds Corporation for such inferior quality of seeds supplied by them and the Corporation itself has also been black-listed.

3. According to the petitioner, he is a member of Bihar Agriculture Service and was posted as a Deputy Director, Udyan and was also made in-charge of the State Level Monitoring Committee for the district of Deoghar in respect of distribution of Kulthi Seeds under the "Contingent Crop Programme, 2010". The petitioner was to coordinate between the Deputy Commissioner, Deoghar, Krishi Vigyan Kendra, Deoghar and the Scientists of Zonal Research Station, Dumka. For dereliction of duty and negligence in distribution of Kulthi Seeds to the tune of 223.20 quintals amounting to Rs. 16,24,896/-, he was placed under suspension vide resolution dated 6th January, 2012 (Annexure-2) issued by the respondent Department. Articles of charges were served upon him on 21st February, 2012 vide Annexure-4 inter alia alleging that the loss of 223.20 quintals of Kulthi Seeds out of total 500 quintals of Seeds allotted for distribution for the said district reflected the lack of coordination on the part of the petitioner who was posted as Deputy Director, Udyan and Incharge, State Level Monitoring Committee for Deoghar. It was his responsibility to undertake continuous monitoring of the seeds distributed and also its regular review while also bringing the matter to the notice of the Director/Secretary, Agriculture. His aforesaid acts showed negligence and dereliction of duty. The aforesaid scheme was introduced in view of the bought situation faced in the area which, because of the petitioner's negligence in discharging his responsibility, was frustrated. The said act has resulted in total loss of Rs. 16,24,896/- to the State Exchequer. By resolution of 25th February 2012, the Inquiry Officer and the Presenting Officer were also appointed with a direction to conclude the departmental proceeding, within a period of three months. The petitioner is said to have participated in the departmental inquiry denying the charges while the Presenting Officer represented the case of the Department.

4. According to the petitioner, certain documents were also demanded vide Annexure-5 dated 29th February, 2014 which however was denied. In any case, departmental proceeding was concluded with the submission of the inquiry report by the Inquiry Officer. It is the specific case of the petitioner that after submission of the inquiry report, no second show-cause notice or copy of the inquiry report was furnished upon him before the impugned order has been passed.

5. Counsel for the petitioner submits that since the impugned order inflicted major punishment of withholding of five increments with cumulative effect, apart from recovery of the aforesaid sum, the same could not have been done without service of the second show-cause notice alongwith the copy of the inquiry report. Counsel for the petitioner has relied upon a Division Bench judgment of the Patna

High Court in the case of Rang Nath Rai Vs. State of Bihar and Others, in order to buttress his submission that the punishment of withholding of two to seven increments with cumulative effect have been treated to be a major penalty under Rule 49 of the 1930 Rules. It has been submitted that if such laid down procedure for imposing major penalty has not been followed, the impugned action is vitiated. Learned counsel for the petitioner has also submitted that the State Exchequer has not been inflicted with real loss of the amount alleged as no payment has been made to Haryana Seeds Corporation for supply of Kulthi Seeds in question. Moreover, such Corporation has been blacklisted by the respondent and these facts have not been denied by the respondents in their counter affidavit. On these facts and legal submission, the impugned order has been assailed on behalf of the petitioner.

6. Counsel for the respondent submits that for the acts of negligence and dereliction of duty committed by the petitioner being the Deputy Director, Udyan and also In-charge, State Level Monitoring Committee, he was placed under suspension and also proceeded against in a charge-sheet for such misconduct. It has been submitted on their part that the full-fledged departmental inquiry was conducted giving due opportunity to the petitioner to place his defence and documents in his favour by compliance of the principles of natural justice. After finding of guilt arrived at during course of the inquiry and the charges were found to be proved, the impugned punishment has been imposed upon him which, according to the respondents, are minor in nature. In such circumstances, according to the respondents, there was no requirement of issuing of second show-cause notice before imposing the punishment. Such statement has been made at paragraphs-13 and 18 of the counter affidavit.

7. I have heard learned counsel for the parties and gone through the relevant materials on record including the impugned order. On the first issue raised by the petitioner challenging the departmental proceeding i.e. imposition of punishment of withholding of five increments with cumulative effect, it is evident from the judgment relied upon by the petitioner in the case of Rang Nath Rai (supra) passed by the Division Bench of the Patna High Court that withholding of two to seven increments with cumulative effect as conceived under Rule 49 has been held to be a major punishment covered under Rule 49(iii). The relevant discussions made by the learned Judges at paragraphs-4 to 8 are illustrative of the opinion rendered by the Patna High Court on the said issue. Learned Judges also considered the judgment rendered by the Hon"ble Supreme Court in the case of Kulwant Singh Gill Vs. State of Punjab, and came to the conclusion that withholding of two to seven increments with cumulative effect would mean that two to seven increments earned by them were cut-off as a measure of penalty for ever in their upward march for earning higher scale of pay. The clock was put back to a lower stage in the time scale of pay and on expiry of two to seven years, the clock would start working from that stage afresh. Thus, the effect of the impugned orders is that the petitioners are reduced in their time scale by two to seven places and it is in perpetuity during the rest of the tenure of service of

such persons.

8. In the instant case, it is evident that the respondents have chosen to impose withholding of five increments with cumulative effect which, in fact, would mean that such increments earned by him were cut-off as a measure of penalty for ever in his upward march for earning higher scale of pay. In the instant case, the clock was put back to a lower stage in the time scale of pay and on expiry of five years, the clock would start working from that stage afresh.

9. Therefore, it is clear that the impugned order imposing withholding of five increments is a major penalty which requires compliance of the laid down procedure prescribed for imposing such a penalty. The requirement of second show-cause notice and copy of the inquiry report to be served upon the delinquent employee before imposition of such a major penalty, has been read to be integral part of the decision making process by the Hon"ble Supreme Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, .

10. In the instant case therefore, it is not in dispute that the impugned order of withholding of five increments have been passed without service of second show-cause notice or copy of the inquiry report upon the petitioner. Apart from that, under the same departmental proceeding, punishment of recovery of the alleged amount has been passed which however appears to be a minor penalty in terms of Rule 49(iv) which has separate procedure prescribed under Rule 55-A of the said Rules. Therefore, the decision making process has suffered in the absence of service of second show-cause notice along with a copy of the inquiry report which could have enabled the Disciplinary Authority who was not the Inquiry Officer to consider the representation of the petitioner as to why the proposed punishment be not imposed upon him before the impugned order has actually been passed. In exercise of powers of judicial review, this Court is not required to decide the correctness of the decision taken; rather it is supposed to examine as to whether the decision making process has been followed in accordance with law after due compliance of the principles of natural justice. From the aforesaid discussions made hereinabove, this Court finds that the decision making process was vitiated in the absence of service of second show-cause notice and copy of the inquiry report upon the petitioner before passing the impugned order of punishment. The impugned order of punishment contained in Notification No. 1862 dated 3rd June, 2013 therefore cannot be sustained in the eye of law and is accordingly quashed. Respondents are, however, at liberty to proceed afresh from the stage of second show-cause notice after serving the same on the petitioner alongwith a copy of the inquiry report under the same departmental proceeding for arriving at a fresh decision in the matter.

The writ petition is accordingly allowed in the aforesaid terms.

Let it be made clear that the observations made hereinabove, shall not be treated as comment upon the merits of the case of the parties.