

(2002) 09 JH CK 0064

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4496 of 2002

Rajesh Damien Kujur

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 09 JH CK 0064

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

Bench : Single Bench

Advocate : M.B. Lal, for the Appellant; S.C. II, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The petitioner has challenged the office order dated 16th July, 2002 issued by the Secretary, Primary and Secondary Education, Human Resources Development Deptt. Jharkhand whereby and whereunder he directed to conduct a fresh enquiry against the petitioner and appointed another Enquiry Officer.

2. The petitioner has also challenged the order of suspension contained in Memo No. 317, dated 30th April. 2001.

3. According to petitioner, one Shankar Ram, Under Secretary, Human Resources Development Deptt., Jharkhand was appointed as Enquiry Officer who after enquiry submitted the report vide letter No. 1090, dated 20th April, 2002 holding the charges "Not proved" against the petitioner. In respect to one allegation it was observed that there was a procedural mistake but cannot be alleged to be a serious charge.

4. The counsel for the petitioner submitted that after submission of the report by the Enquiry Officer though it was open for the disciplinary authority to differ with the finding or to ask for further enquiry, if there is any defect but the authority cannot direct to hold fresh enquiry by appointing another Enquiry Officer.

5. The counsel for the State on instruction submitted that the Presiding Officer being not present during enquiry, the enquiry having held ex parte it has been order to hold fresh enquiry.
6. A similar case fell for consideration before Supreme Court in the K.R. Deb Vs. The Collector of Central Excise, Shillong, In the said case, the Supreme Court held that in case of some defect in the enquiry, the disciplinary authority can direct the same Enquiry Officer to conduct further enquiry for the grounds to be recorded but cannot direct to hold a fresh enquiry through some other officer.
7. In the facts and circumstances, as it was not open to disciplinary authority to ask for fresh enquiry through another officer after submission of a report by the Enquiry Officer, the impugned order dated 16th July, 2002 is set aside.
8. The case is remitted to the disciplinary authority with liberty to pass order, in accordance with law. The authority may remit the case to the same Enquiry Officer for further enquiry and to submit report on hearing the petitioner and the Presiding Officer.
9. So far as order of suspension is concerned, I am not inclined to interfere with the order for the present. However, if no final order is passed within two months" from the date of receipt/production of a copy of this order, the order of suspension shall stand revoked.
10. The respondents in the meantime will pay the petitioner current subsistence allowance within fifteen days and arrears of subsistence allowance and other admitted dues, if any within two months from the date of receipt/production of a copy of this order.
11. The petitioner will produce a copy of this order before the Secretary, Primary and Secondary Education, Jharkhand and the Enquiry Officer who submitted the report.
12. The writ petition stands disposed of with aforesaid observations and directions.