

(2009) 05 JH CK 0013
In the Jharkhand High Court

Ram Bilas Ram

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Citation : (2009) 05 JH CK 0013

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—This petition has been preferred mainly against an order passed by respondent No. 2 dated 17th March, 2003 (Annexure-8 to the memo of the petition) whereby, a punishment was inflicted upon the present petitioner for recovery of salary, which has already been paid to the petitioner, for 307 days. This punishment has been inflicted upon the petitioner, as vehemently submitted by the learned Counsel for the petitioner, without giving any notice and without giving any opportunity of being heard to the petitioner. It has also been submitted by the learned Counsel for the petitioner that for the same very subject initially, an enquiry was held against the present petitioner and a punishment of censure was inflicted against the petitioner. Learned Counsel for the petitioner has also taken this Court to the various annexures of this writ petition including averments referred in paragraph 26 of the memo of the petition, that the petitioner has actually worked for the period running from 1st July, 2000 to 4th May, 2001 in the State of Jharkhand as Havaladar in Jharkhand Armed Police-5 at Deoghar and thus, before leveling the charges against the present petitioner that he has not worked arid, therefore, no salary can be paid, at least, requires a notice and hearing, so that the petitioner can point out that he has actually worked. There is already an enquiry of those very charges and a punishment of censure has already been inflicted upon the present petitioner and therefore, second time this charge can never be levelled against the present petitioner and therefore, it is submitted by, the learned Counsel for the petitioner

that order passed at Annexure-8, dated 17th March, 2003 by respondent No. 2, deserves to be quashed and set aside, as there is gross violation of principles of natural justice.

2. I have heard learned Counsel for the respondents, who has submitted that the petitioner is much more interested in election rather than performing the duty as Police Officer. He has never worked for the period running from 1st July, 2000 to 4th May, 2001 and therefore, a secret enquiry was also conducted and therefore, an order dated 17th of March, 2003 at Annexure-8 has been passed by the high ranking officer of the State of Jharkhand i.e. respondent No. 2 and therefore, the petition deserves to be dismissed.

3. In view of these aforesaid submissions and looking to the facts and circumstances of the case, it appears that:

(i) the present petitioner is an office bearer of some police association. Initially, he was transferred, but, he had not joined at the transferred post, as some election was ensuing. Thereafter, the transfer order was cancelled.

(ii) as per the allegations levelled by the respondents, the petitioner has not worked for the period running from the period 1st July, 2000 to 4th May, 2001 and therefore, the punishment order has been passed that salary for this intervening period of 307 days should be recovered from the present petitioner vide order dated 17th March, 2003 at, Annexure-8 to the memo of the petition.

(iii) never any notice was served to the petitioner before passing an order at Annexure-8 to the memo of the petition and consequently, no opportunity of being heard was given to the petitioner before passing an order of recovery of salary for 307 days.

(iv) some secret enquiry, was, conducted, but, this secret enquiry report was never given to the present petitioner at least, an opportunity of being heard, ought to have been given by the concerned respondent authority to the petitioner to give reply of the charges so that he can point out the respondents his all possible defences, including the fact that on earlier occasion also punishment of censure was inflicted for the same very charges. Be that as it may, the fact remains that before passing order at Annexure-8, neither any notice and nor any opportunity of being heard was given to the present petitioner.

4. As a cumulative effect of the aforesaid facts and reasons, I, hereby quash and set, aside the order passed by respondent No. 2 dated 17th of March, 2003 at Annexure-8 to the memo of the petition, reserving liberty with the respondents to take recourse permissible under the law and at least, after following the bare minimum requirement of principles of natural justice, an action, permissible under the law, will be taken.

5. Accordingly this petition is allowed. The order at Annexure-8 is hereby quashed and set aside.