

(2002) 01 JH CK 0029

In the Jharkhand High Court

Case No : WP (S) No"s. 3793 and 3795 of 2001

Rama Shankar Ram

APPELLANT

Vs

State of Bihar and Another
 Ram Suresh Sharma Vs
State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 72(1), 76

Citation : (2002) 01 JH CK 0029

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

Bench : Single Bench

Advocate : S.B. Gadodia and B.P. Mishra, for the Appellant; Shamim Akhtar, SC-II, A.K. Mehta, JC to SC-II, A. Allam, Spl. Advocate and Nehala Sharmin, JC, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—In both the cases, as common question of law is involved, they were heard together and are being disposed of by this common order.

2. Petitioner Rama Shankar Ram of W.P. (S) No. 3793 of 2001 has challenged the order of dismissal, contained in Memo No. 2910 dated 9th August. 2001, whereby and whereunder, the State of Bihar has dismissed him from service, as measure of punishment. The other petitioner Ram Suresh Sharma of W.P. (S) No. 3795 of 2001, while challenged the order of suspension, contained in Order No. 205/2000 dated 28th November, 2000, communicated vide Memo No. 1036 dated 19th April, 2001. has also challenged the order of dismissal, contained in Memo No. 1037 dated 19th April, 2001. Both the aforesaid orders have been issued by the Spl. Secretary/Secretary of Personnel & Administrative Reforms Department. State of Bihar.

3. The common point taken by the petitioners is that they having been posted within the State of Jharkhand as on 15th November. 2000/- or in pursuance of provisional allocation, made by the Central Government, after such posting the

State of Bihar or the appropriate authority of the State of Bihar has no jurisdiction to pass penal order against the petitioners.

4. Reliance has been placed on a decision of this Court in the case of Arvind Vijay Bilung v. State of Bihar and Ors., reported in 2001 (2) JLJR 227 : 2001 (3) JCR 155. In the case of Ram Suresh Sharma of W.P. (S) No. 3795 of 2001, additional plea has been taken that the order of dismissal has been passed without holding any enquiry and without giving any opportunity to the petitioner.

5. Counsel for the State of Bihar submits that the petitioner Ram Suresh Sharma, having been transferred to the State of Jharkhand after re-organisation as per the provisions of the Bihar Re-organisation Act, 2000, the State of Bihar continued to remain as the appointing authority and thus, the order was wholly within the jurisdiction.

So far as the State of Jharkhand is concerned, according to it, the power is to be exercised as per the guideline communicated by the Government of India vide letter dated 23rd February, 2001 (Annexure-A to the counter affidavit filed in WP (S) No. 3793 of 2001).

6. The question, as raised in the present cases, as to who is the authority to take disciplinary action in respect to those, posted in the State of Jharkhand, stands decided by this Court's decision in the case of Arvind Vijay Bilung (supra).

7. Admittedly, petitioner Rama Shankar Ram was posted at Dhanbad since 1998 and continued to hold the office and post at Dhanbad as on 15th November, 2000, the day the State was re-organised. The area (Dhanbad) having fallen within the territory of Jharkhand, the State of Bihar or any authority of the State of Bihar has no jurisdiction to take disciplinary action against the petitioner Rama Shankar Ram, till final allocation is made in the said State.

8. So far as petitioner Ram Suresh Sharma is concerned, he was posted at Patna prior to re-organisation of the State. The Central Government prior to re-organisation issued general and specific order u/s 72(1) of the Bihar Re-organisation Act, 2000 vide Memo No. 27/2000-SR (S) dated 6th November, 2000 and placed the services of the petitioner Ram Suresh Sharma and some others at the disposal of the State of Jharkhand on and from 15th November, 2000 onwards. Such notification u/s 72(1) of the Re-organisation Act, 2000 having been issued and services of the petitioner Ram Suresh Sharma having been placed provisionally under the State of Jharkhand since 15th November, 2000, the State of Bihar or any authority of the State of Bihar has no Jurisdiction to take disciplinary action against him.

9. It will be evident from the supplementary affidavit that the formal order of relieve was also issued on 19th November, 2000 and the petitioner Ram Suresh Sharma Joined the post at Ranchi on 23rd November, 2000 i.e. much prior to issuance of the impugned order of suspension and dismissal.

10. So far as the letter dated 23rd February, 2001, is concerned the same having

been issued by the Director (SR), Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, Government of India, in its individual capacity to one Sri U.N. Panjiar, Commissioner-cum-Secretary, Department of Home, Government of Bihar, will have no effect on the provisions of the Re-organisation Act, as it can not be termed to be direction of the Central Government u/s 76 of the Re-organisation Act, 2000.

11. In the facts and circumstances, the State of Bihar or the authority under the State of Bihar, having no Jurisdiction, the order of dismissal, contained in Memo No. 2910 dated 9th August, 2001, so far the petitioner Rama Shankar Ram of WP (S) No. 3793 of 2001 is concerned, and the order of suspension dated 28th November, 2000 and the order of dismissal, contained in Memo No. 1037 dated 19th April. 2001, so far the petitioner Ram Suresh Sharma is concerned, are hereby set aside.

12. The case of Rama Shankar Ram is remitted to the Secretary, Industries Department, Government of Jharkhand and the case of Ram Suresh Sharma is remitted to the Secretary. Personnel and Administrative Reforms Department, Government of Jharkhand, to determine as to whether the Government of Jharkhand intends to proceed further with the matter, in accordance with law, or not.

13. It will be open to the respondent State of Bihar to forward the relevant records in respect to the petitioners to their respective departments, within the State of Jharkhand.

14. Both the writ petitions stand disposed of with the aforesaid observations and directions.