

(2013) 06 JH CK 0069
In the Jharkhand High Court
Case No : C.W.J.C. No. 156 of 2001

Ramjanam Mishra

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-06-2013

Acts Referred:

Citation : (2013) 4 AJR 314 : (2013) 3 JLJR 374

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : S.K. Dwivedi, for the Appellant; J.P. Jha and Mr. Pramod Kr. Chaudhary, Advocate for Respondent Nos. 8 and 9, for the Respondent

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J.—The petitioner has approached this Court seeking the following reliefs:

(i) For the issuance of a writ, direction, order in the nature of certiorari or any other appropriate writ, direction or order quashing the report dated 19.02.1997 (Annexure-2) submitted by the Respondent No. 7 which is collusive and malafide because under the Bihar State University Act, 1976 the Executive Administration has got no part to play in the Administration of the University or Colleges.

(ii) For the issuance of a writ, direction, order in the nature of certiorari or any other appropriate writ, direction or order quashing the ex-parte enquiry report dated 08.01.1999 contained in Annexure-13.

(iii) For the issuance of a writ, direction, order in the nature of certiorari or any other appropriate writ, direction or order quashing the communication Nos. 198/99 dated 24.04.1999 and 59/99 dated 27.05.1999 whereby the Respondent No. 4 removed the petitioner from the services of the University.

(iv) For the issuance of a writ, direction, order in the nature of certiorari or any other appropriate writ, direction or order quashing the appellate order dated

09.11.2000 whereby order of the Respondent No. 4 has been confirmed.

(v) For the issuance of an appropriate writ, direction or order including a writ, direction or order in the nature of mandamus commanding the respondents to forbear from giving effect to the impugned orders dated 27.05.1999 contained in Annexure-16 and that of dated 09.11.2000 contained in Annexure-17 and to direct them to restore the status and public office of the petitioner herein with all consequential benefits in accordance with law.

(vi) For grant of such other further and/or consequential reliefs as may be deemed fit and proper in the facts and circumstances of the case on the interest of justice.

Brief facts of the case are that, the petitioner was appointed on the post of Librarian on 02.03.1973. It is the case of the petitioner that in the year 1996, there was huge misappropriation of money in the district administration which was published in the newspaper and a Public Interest Litigation was filed in the Hon"ble High Court vide C.W.J.C. No. 581 of 1997 and in the said P.I.L. a C.B.I. enquiry was ordered by the Hon"ble High Court With a view to victimise the petitioner, enquiry was instituted against the petitioner and the petitioner was transferred from Sahebganj to Jamtara. The petitioner unsuccessfully challenged the order of transfer and on 17.01.1998, a charge-memo was served upon the petitioner in which six charges were framed against him. The petitioner requested the authorities to supply the list of books which allegedly were not found in the library however, such list was not supplied to the petitioner for a considerable period of time. Finally, on 13.12.1998, the list of books was supplied to the petitioner and thereafter, the petitioner sought time to file reply to the charges framed against him. However, without granting any such opportunity to the petitioner, the enquiry was abruptly concluded and an ex-parte report was submitted. The enquiry report dated 08.01.1999 was submitted holding that the petitioner had nothing to say in his defence. The enquiry report was accepted by the disciplinary authority and an order of dismissal from service was passed, which was affirmed by the appellate authority also. Under these circumstances, the petitioner has approached this Court by filing the present writ petition.

2. A counter-affidavit has been filed in which it has been stated that the charges of insubordination, negligence, misappropriation etc. have been found proved against the petitioner. In complete disregard to the order passed by the Hon"ble High Court directing the petitioner to join the college at Sahebganj, the petitioner did not join at Sahebganj. It has been found during the course of enquiry that the petitioner was running a book shop and he had no explanation for disappearance of 11533 books from the library.

3. Heard the learned counsel appearing for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has submitted that it has been admitted by the enquiry officer that inspite of several requests the principal

of the college did not provide the list of books till 13.12.1998. He has further submitted that six charges were framed against the petitioner however, the enquiry proceeded to ascertain the alleged disappearance of 11533 books from the library only and there is no finding recorded by the enquiry officer in so far as other five charges are concerned. What were the materials before the enquiry officer on which other charges framed against the petitioner are found proved, are not appearing from the enquiry report.

5. Per contra, Mr. J.P. Jha, the learned Senior counsel appearing for the college, has submitted that though it is not specifically stated in the enquiry report that the charges in so far as misappropriation, insubordination, negligence etc. on the part of the petitioner have been found proved, on consideration of the materials which were brought before the enquiry officer the disciplinary authority and the appellate authority have specifically dealt with those evidences in their order and therefore, no prejudice has been caused to the petitioner. It is further submitted that since all the charges related to each other, therefore, the enquiry officer did not consider it necessary to give independent findings on other charges. The learned Senior counsel has relied on the decision of the Hon"ble Supreme Court in " Govt. of A.P. and Others Vs. Mohd. Narsullah Khan, .

6. From perusal of the documents on record, it is clearly established that one of the charges against the petitioner as framed during the departmental enquiry, was for the loss of 11533 books which contained few rare books. Admittedly, a list of books was not supplied to the petitioner till 13.12.1998 and thereafter, the petitioner sought two weeks" time for filing reply however, no further time was granted to the petitioner. The enquiry officer concluded that since the petitioner failed to submit his reply in defence of his case, the enquiry has been concluded and chaises stood proved. Further, it is clear from the enquiry report that the enquiry officer proceeded to examine the charge leveled against the petitioner for loss of books only and there is no discussion in so far as other charges which were framed against the petitioner, are concerned. I am unable to agree with the contention of the learned counsel for the respondents that since the disciplinary authority and the appellate authority have considered the materials which were already on record, though not discussed by the enquiry officer in his enquiry report, ho prejudice has been caused to the petitioner. The disciplinary authority and the appellate authority could not have taken into consideration the materials which were not brought to the notice of the petitioner and which have not been discussed by the enquiry officer in his enquiry report dated 08.01.1999. The petitioner has been denied the opportunity to answer the adverse material, if any, found against him. On this ground alone, I am of the considered opinion that the matter needs to be remitted back to the authorities for fresh reconsideration. A finding has been arrived at behind the back of the petitioner, as it has not been disclosed by the enquiry officer which were the materials on which he has reached at the conclusion that the charges leveled against the petitioner are proved.

7. In view of the aforesaid, the matter is remanded back to the authorities for a fresh consideration after giving proper and sufficient opportunity to the petitioner and supplying all the materials collected during the enquiry. The impugned orders dated 24.04.1999, 27.05.1999 and 09.11.2000 are quashed. The writ petition is allowed in the aforesaid terms.