(2012) 10 JH CK 0017

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4362 of 2001

Ratan Kumar Singh — APPELLANT

Vs

The Bihar State Agriculture Marketing Board and The Agriculture Market Produce Committee — RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2012) 4 JLJR 580

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : M. Sohail Anwar, Afaque Ahmad, Sharabhil Ahmed and Shadab Bin Haque, for the Appellant; V.P. Singh, Mrinal Kant Roy, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh

1. Admittedly, petitioner was earlier removed from the services vide order dated 30.04.1993, Annexure no. 3. Order dated 30.04.1993 of removal was quashed by this Court vide order dated 09.08.1994, Annexure no. 4, with all consequential benefits and the matter was further remitted back to the disciplinary authority. After the remittance of the case, petitioner was issued fresh show-cause notice calling his explanation on four charges. Having perused the show-cause notice and explanation furnished by the petitioner and having considered other materials placed before the inquiry officer, inquiry officer did not find any charge proved against the petitioner and was pleased to make recommendation to exonerate the petitioner. However, disciplinary authority i.e., Managing Director of the Bihar State Agriculture Marketing Board, Patna did not agree with the inquiry officer and had issued second show-cause notice to the petitioner. Thereafter, disciplinary authority was pleased to pass impugned punishment order dated 21st July 2001, Annexure no. 13 withholding three increments and non-payment of the salary for the period petitioner remained

under suspension and was removed from the services.

2. The first and third charge against the petitioner are that petitioner remained absent unauthorisedly in the year 1991 and 1992 and in fact had changed the entries in the attendance register converting his absence into presence. Inquiry officer has opined, if petitioner was absent from the duties and had converted his absence into presence by overwriting, petitioner ought to have been shown absent from the duties and in that event either his Earned or Casual leave should have been marked or he should have been treated on leave without pay. However, petitioner was treated on duty and was paid full salary for the entire period which shows that petitioner was present and he had not made any overwriting converting his absence into the presence. However, disciplinary authority in the second show-cause notice dated 11.09.2000, Annexure no. 9 has disagreed with the opinion of the inquiry officer only on the ground that petitioner could not furnish satisfactory explanation on the charges no. 1 and 3.

3. Likewise, inquiry officer on the charge no. 2 that petitioner did not cooperate with the employees in recovery of the market fee, had opined that charge did not stand proved against the petitioner for the simple reason that no evidence or material was placed before him to the effect as to on which particular date, petitioner did not support the other staff in making recovery of the market fee. However, disciplinary authority did not agree with the inquiry officer on the charge no. 2 too, on the ground that inquiry officer did not make proper inquiries from the office of the Managing Director and there was no evidence to prove innocence of the petitioner.

4. Likewise, inquiry officer on the charge no. 4 that language used by the petitioner in his explanation amounts to disrespect to the seniors and goes to prove arrogance of the petitioner, had opined that language in the reply to show-cause notice did not amount to arrogance or insubordination. Inquiry officer did not find any unparliamentary language in the reply to the show-cause notice. However, disciplinary authority did not agree with the inquiry officer on the charge saying language used in the explanation to the show-cause notice is disrespectful because petitioner had written in the explanation that issuance of the charge-sheet was outcome of the malice and ulterior motive on the part of the seniors.

5. Having heard learned counsel for the parties and having perused the record, this Court is of the firm opinion that disciplinary/competent authority has jurisdiction to take contrary view to the view taken by the inquiry officer for some valid and sound reasons and in that event disciplinary authority or the competent authority has to issue show-cause notice mentioning therein the valid and sound grounds for taking contrary view to the view taken by the inquiry officer and proposing therein the punishment against the delinquent employee.

6. Now, as observed hereinabove, the reasons given by the disciplinary authority for taking contrary view to the view taken by the inquiry officer seems to be eye-

wash and cannot be said to be valid, sound and sufficient grounds for taking contrary view.

7. In fact, inquiry officer had observed that if petitioner remained absent and had converted his absence into presence, authorities should not have had paid salary or should have had treated him on leave. While this sound ground has been disturbed by the disciplinary authority by saying the petitioner himself had admitted that on some occasions, he could report late in the office and thereafter change was made in the attendance register marking his presence instead of absence. View taken by the disciplinary authority does not appeal to me at all in view of the ground taken by the inquiry officer.

8. In the same fashion, the view of the disciplinary authority on charge no. 2 that there is no evidence to prove the innocence of the petitioner is no ground in the eye of law while, in fact inquiry officer had exonerated the petitioner on the charge no. 2 on the ground that department had not placed any material before him to say petitioner did not cooperate with the staff in collecting the market fees.

9. Undisputedly, petitioner has not used any unparliamentary language. Writing the sentence that an employee has been charge-sheeted by the senior with ulterior motive seems to be no ground to punish the employee by withholding his increments.

10. This Court, while exercising the writ jurisdiction under Article 226 of the Constitution of India ordinarily, should not disturb the findings of fact recorded by the Disciplinary Authorities. However, there is a caveat to it. If finding of fact recorded by the Disciplinary Authority is totally perverse, without there being any evidence or seems to be result of non application of mind or is found to be totally improbable or unjustified, this Court must come forward to protect the innocent employee.

11. As discussed, herein above findings of inquiry officer and reasons thereof recorded by him exonerating the delinquent employee seems to be totally correct and justified. Reasons assigned by the Disciplinary Authority for taking contrary view to the view taken by inquiry officer are not only perverse but are also totally improbable, unjustified and seems to be result of bias. Bias can be easily inferred in the present case. Consequently, the writ petition is allowed. Impugned order vide Office order No, 24 dated 21.07.2001 is hereby quashed. Let entire consequential payment of arrears be made preferably within 90 days from today.

