
(2011) 11 JH CK 0059
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2932 of 2006

Renu Kumari

APPELLANT

Vs

The State of Jharkhand and others

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 1 JLJR 133

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel

1. Counsel for the petitioner seeks leave to delete respondent no. 7 as party respondent to this petition.
2. Permission, as sought for, is granted to delete respondent no. 7 as party respondent.
3. Amendment shall be carried out with red ink during course of the day.
4. Counsel for the petitioner submitted that the petitioner was legally appointed on the post of "Shiksha Doot" on 15th November, 2002 vide order at Annexure-1 to the memo of the present petition. Thereafter, the petitioner worked honestly, sincerely, diligently and to the satisfaction of the respondents for several years.
5. It is further submitted by the counsel for the petitioner that without giving any notice and without giving any opportunity of being heard to the petitioner, the services of the petitioner have been terminated with effect from 10th January, 2006 (Annexure-2) and therefore, it is prayed that the order at Annexure-2 dated 10th January, 2006 may be quashed and set aside so far it relates to the termination of the services of the present petitioner.

6. Counsel for the respondents-State is unable to point out that for what reason, the services of the present petitioner have been terminated. It is further submitted by the counsel for the respondents that there was certain complain received against the present petitioner and an inquiry was conducted and a report was given, which is at Annexure-A to the counter affidavit, filed by the respondents and on the basis of this report, the services of the present petitioner have been terminated. The report was given by the Block Education Extension Officer, Gamaharia, Seraikella-Kharsawan, dated 8th September, 2005.

7. Having heard counsel for both the sides and looking to the facts and circumstances of the case, I hereby, quash and set aside the order of termination of the present petitioner dated 10th January, 2006 at Annexure-2 to the memo of the present petition mainly on the following facts and reasons:-

(i) The present petitioner was appointed as "Shiksha Doot" on 15th November, 2002 vide order at Annexure-1 to the memo of the present petition.

(ii) It further appears from the facts of the case that the petitioner worked as "Shiksha Doot" honestly, sincerely, diligently and to the satisfaction of the respondents for several months and for several years. The petitioner was also getting salary from the respondents Government authorities.

(iii) It further appears that without giving any notice to the petitioner and without holding any inquiry, the services of the petitioner have been brought to an end vide order at Annexure-2 dated 10th January, 2006. No reason worth the name has been assigned in the said order. Thus, the order is a non-speaking order and therefore, there is a gross violation of the principles of natural justice and as the order is a non-speaking order, it is an arbitrary in nature. Whenever there is an arbitrariness in termination of services of an employee there is always violation of right of equality, hence, the impugned order is violative of Article 14 of the Constitution of India.

(iv) Counsel for the respondents submitted that there is an inquiry conducted by the Block Education Extension Officer, which is at Annexure-A to the counter affidavit. Looking to this Annexure-A to the counter affidavit, it appears that the so called inquiry is also conducted ex-parte. For this inquiry also at least notice should have been given to the petitioner so that the petitioner could have reply the allegations levelled against her. Moreover, a copy of the so called report at Annexure-A, if at all relied upon while terminating the services of the petitioner, ought to have been supplied to the petitioner. Never a copy of the report have been supplied to the petitioner. Therefore, the so called report has got no relevance for termination of the services of the petitioner.

(v) Moreover, as stated hereinabove that the impugned order dated 10th January, 2006 at Annexure-2 is thoroughly a non-speaking order and therefore, as per the decision rendered by the Hon'ble Supreme Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, especially in paragraph no. 9, no reason can be assigned in the counter affidavit, which are never

referred in the impugned order otherwise, all the non-speaking orders will be converted into a speaking order and all void and illegal orders can be converted into valid and legal orders. Paragraph 9 of the aforesaid decision reads as under:-

9. An attempt was made by referring to the Commissioner's affidavit to show that his was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Reasons ought to have been mentioned in the impugned order itself and therefore, the reasons assigned in the counter affidavit cannot be read into. Moreover, the so called inquiry is also without giving any notice and without giving any opportunity of being heard to the petitioner, hence also, it has got no value in the eye of law. Thus, Annexure-A to the counter affidavit cannot be relied upon by the respondents in the eye of law and therefore, this contention raised by the counsel for the respondents is not accepted by this Court.

(vi) It has been held in the case of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, in para 8 as under:-

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

8. As a cumulative effects of the aforesaid fact, reasons and judicial pronouncement, I hereby, quash and set aside the order at Annexure-2 so far it affects the present petitioner and so far it relates to the termination of the services of the present petitioner, which is dated 10th January, 2006.

9. The petitioner shall be paid honourarium for the aforesaid post running from

August, 2005 onwards. If any honourarium is paid from August, 2005 onwards, the same will be given as set off.

10. Accordingly this writ petition is allowed to the aforesaid extent.