
(2016) 11 JH CK 0024
In the Jharkhand High Court
Case No : W.P. (S) No. 4737 of 2015

Sapan Kumar Shit

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 JBCJ 703 : (2017) 1 JCR 475 : (2017) 1 JLJR 188

Hon'ble Judges : Mr. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Suman Banerjee, JC to GA, for the State; Mr. Ravindra Nath & Mr. Praful Jojo, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Mr. Shree Chandrashekhar, J. - Aggrieved of order dated 21.01.2013 where under, the petitioner has been deprived of full salary and allowances except, subsistence allowance for the period under suspension, the petitioner has preferred this writ petition.

2. Heard.

3. Learned counsel for the petitioner submits that order dated 21.01.2013 is not an order imposing penalty upon the petitioner for the alleged misconduct for which a charge memo in Prapatra-K was served upon the petitioner and whileso, the petitioner is entitled for full salary and allowances for the period under suspension.

4. The learned State counsel, raising a preliminary objection to the maintainability of the writ petition, submits that against the impugned order dated 21.01.2013 the petitioner has an alternative remedy of appeal before the Regional Deputy Director of Education. On merits, it is submitted that the Establishment Committee examined the matter and in view of the misconduct of the petitioner in not obeying orders of the superiors and in not following the

curriculum of the school, it was decided to deprive him of full salary and allowances.

5. The petitioner, who was working as Assistant Teacher in Primary School, Kuldiha Baharagora-1, was put under suspension vide order dated 23.08.2012. Under the said order, the petitioner was entitled for subsistence allowance under Rule 95 of the Service Code. Charge-memo under Prapatra-K was issued to him and the Block Education Extension Officer, Patamda was appointed enquiry officer before whom the petitioner presented his defence on 22.09.2012. It appears that in compliance of order dated 15.10.2012 passed by District Superintendent of Education, East Singhbhum the enquiry officer recorded statements of other teachers also. Enquiry report dated 30.10.2012 discloses that one of the charges framed against the petitioner was that he does not attend his duty and he remains absent from the school. The enquiry officer opined that the said charge is not proved. Another charge against the petitioner was that he has not shown any improvement. On this, the enquiry officer found that the allegation of unauthorised absence is confined to only one day, that is, on 09.06.2009. This has been explained by the petitioner stating that on occasion of Harinam Samkirtan Mahotsav on the request of the villagers that day was declared a holiday. Similarly, to another charge that the petitioner tore the show-cause notice issued by the Block Education Extension Officer, the enquiry officer opined that this charge requires proof. In the counter-affidavit, only stand taken by the respondents is that in view of the allegations against the petitioner, the District Establishment Committee decided that the petitioner is not entitled for full salary and allowances. Admittedly, no penalty has been imposed upon the petitioner. "Warning" is not a penalty under Bihar State Nationalised Elementary School Teacher (Transfer and Disciplinary Action) Rules, 1994. Rule 97 of the Jharkhand Service Code provides that when a government servant who has been suspended, on his reinstatement the authority competent to order reinstatement shall make specific order regarding the pay and allowances to be paid to the government servant for the period of his absence from duty. Impugned order dated 21.01.2013 is an order under Rule 97(1)(a) of Jharkhand Service Code, 2001. Sub-rule 2 provides that where authority is of the opinion that the government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the government servant shall be given full pay and allowances to which he would have been entitled has he not been suspended.

6. As noticed above, the enquiry officer did not find charges framed against the petitioner proved. The District Superintendent of Education, East Singhbhum has also not recorded a finding that charges of misconduct as contained in Prapatra-K are proved against the petitioner. Impugned order dated 21.01.2013, thus, has been passed in breach of statutory rules. The impugned order further indicates that while treating the petitioner not entitled for full salary and allowances, the said order has been treated as a penalty, however, before imposing such penalty no notice was issued to the petitioner. The aforesaid order, thus, has been passed not only in breach of statutory provision, it has been passed in breach of rules of

natural justice also. Accordingly, objection to the maintainability of the writ petition on the ground of availability of alternative remedy is rejected. The impugned order dated 21.01.2013 is held unsustainable and accordingly, it is quashed.

7. The writ petition stands allowed.