

(2021) 01 JH CK 0150
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4734 Of 2016

Saroj Kumar Sahu And Ors	Vs	APPELLANT
State of Jharkhand And Ors		RESPONDENT

Date of Decision : 14-01-2021

Acts Referred:

Indian Penal Code, 1860 — Section 409, 420

Citation : (2021) 01 JH CK 0150

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : A.K. Sahani, Shubham Mishra

Final Decision : Dismissed

Judgement

1. Heard Mr. A.K. Sahani, learned counsel for the petitioners and Mr. Shubham Mishra, learned counsel for the respondent-State.
2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.
3. At the outset, Mr. A.K. Sahani, learned counsel for the petitioners on instruction, submits that he is not pressing the case of petitioner no. 1 in view of the fact the petitioner no. 1 does not want to press the writ petition and the writ petition is confined only to the petitioner nos. 2 to 4.
4. In view of the above submission of the learned counsel for the petitioners, the writ petition is being heard only on behalf of petitioner nos. 2 to 4.
5. The petitioners have preferred this writ petition for quashing of order dated 13.08.2016 contained in Annexure-6 whereby the petitioners have been

dismissed from the services.

6. The petitioners were employed on the post of Gram Rojgar Sewaks under the respondents. A show-cause notice vide letter no. 538 dated

16.07.2016 was issued asking the petitioners to submit their explanations within an hour on the allegation that in course of clearance of wage liability

for the financial year 2015-16 and 2016-17, it was detected that the amount was illegally withdrawn by the petitioners. The amount in question was to

the tune of Rs. 4,93,255/-. The petitioners submitted explanation to the show-cause on different dates. The petitioners made representations before the

respondent no. 3 stating therein that any amount payable to the mates under the scheme was never deposited in their account within their knowledge.

Petitioner no. 1 submitted application before the respondent no. 3 intimating therein that Nitesh Chandra Prasad, Computer Operator, posted in Boram

Block committed such mischief and implicated the petitioners falsely. The amount in question was found to be withdrawn illegally and for that F.I.R.

being Boram P.S. Case No. 31 of 2016 under sections 409 and 420 of the Indian Penal Code has been instituted against the petitioners.

7. Mr. A.K. Sahani, learned counsel appearing on behalf of the petitioners assailed the impugned order on the ground that the petitioners have been

falsely implicated in the case. He submits that impugned order has been passed without any show-cause notice and without contemplating any

departmental proceeding against the petitioners. He submits that even explanation submitted by the petitioners was not considered properly. He

submits that in absence of any departmental proceeding and show-cause, the case of the petitioners is required to be considered by the respondents.

Learned counsel for the petitioners relied on judgment of the Co-ordinate Bench of this Court in the case of ""Anup Shashi Bhushan Ekka Vs. State of

Jharkhand & Others"" in W.P.(S) No. 6154 of 2018 order dated 21.05.2020 and submits that the case of the petitioners is fully covered with the said

judgment.

8. Per contra, Mr. Shubham Mishra, learned counsel appearing on behalf of the respondent-State submits that the petitioners were appointed as

Rojgar Sewaks purely on contractual basis under MNREGA Scheme and there is specific clause in their respective appointment letter that all the

persons appointed under contractual basis can be removed from their services

without assigning any reason on the basis of dissatisfaction with their work. He submits that the MNREGA Scheme are running in 12 panchayats under Boram Block and Rojgar Sewaks are responsible for proper execution of the scheme, including registration of workers, collection of demand for employment, maintenance of records and processing of payment. He submits that the petitioners had the fiduciary responsibility of scheme. He further submits that the petitioners in collusion with computer operator Mr. Nitesh Chandra Prasad got their names entered in the Register (MIS) of labourers and mates and misappropriated government money amounting to Rs. 4,93,255/- fraudulently even as they claimed payment as Rojgar Sewaks. He submits that this matter was enquired by the higher officers contained in Annexures-E and F to the counter-affidavit. He submits that F.I.R. being Boram P.S. Case No. 31 of 2016 dated 12.08.2016 for the offence under sections 409 and 420 I.P.C has been lodged against the petitioners. He submits that show-cause has already been issued against the petitioners by way of Annexure -I to the counter-affidavit. He submits that the petitioners replied to the said show-cause contained as Annexure-J to the counter-affidavit. He submits that in that view of the matter there is no illegality in the impugned order.

9. Having heard the learned counsel for the parties, the Court has gone through the materials on record. The appointment letter has been brought on record by way of filing counter-affidavit where in Clause-5 clearly speaks that the contractual employment can be terminated at any stage without any show-cause. The petitioners with collusion with computer operator entered their names in the Register (MIS) of labourers and mates and misappropriated government money amounting to Rs. 4,93,225/- fraudulently and they were claiming for payment as Rozgar Sewaks for that an F.I.R. being Boram P.S. Case No. 31 of 2016 has been instituted against the petitioners. The Court finds that show cause has already been issued to the petitioners which is admitted by the petitioners and they have replied to the show-cause. The appointment letter clearly speaks that appointment was contractual in nature. Clause 5 of the appointment letter stipulates that services can be terminated without any show-cause. It is well-settled provision of law that for a contractual employee, on termination of his service, claiming right to continue in service and temporary status covered by the

Industrial Disputes Act, the remedy lies before the Tribunal or before the Labour Court, and not before the High Court. The petitioners were not

holding any civil post in view of termination of service, master-servant relationship ceased rendering the provision of the Act. In this regard reference

may be made to the case of ""Union of India Vs. Deep Chand Pandey"" reported in (1992) 4 SCC 432 in which the Hon'ble Supreme Court has held as

under:-

6. The present respondents are claiming the right to continue in the employment of the Union of India as before, with additional claim of temporary

status and it is, therefore, idle to suggest that such a claim is not covered by the Act. The necessary conclusion, therefore, is, that the remedy of the

respondents was before the Tribunal and not the High Court. We, accordingly, hold that the High Court did not have the jurisdiction to entertain the

claim of the respondents. Consequently the impugned judgment is set aside, the writ petition before the High Court is dismissed and these appeals are

allowed, but without costs.

10. Show-cause has already been issued against the petitioners which the petitioners have admitted in the writ petition. Admittedly, there was no

statutory rule requiring any notice. The petitioners' service was not being governed by any statutory rule. Thus, the petitioners' service was required to

be interpreted only on the basis of appointment letter which is contractual in nature. Appointment in question was regular procedure falling necessary

rules. The judgment in the case of ""Anup Shashi Bhushan Ekka"" (Supra) relied by the learned counsel for the petitioner was on different facts and

circumstances. In that case, the Hon'ble Single Judge has come to the conclusion that the order in question was stigmatic. Thus, this judgment is not

helping the petitioner.

11. As a cumulative effect of the discussions made above no relief can be extended to the petitioners. Accordingly, this writ petition is dismissed.

However, the petitioners are at liberty to get the matter adjudicated by way of approaching the appropriate Civil Court or Tribunal. If any industrial

disputes are being raised by the petitioners that will be decided on its own merit without being prejudiced by the discussions made in this order.

12. I.A., if any, stands disposed of.