

(2015) 03 JH CK 0069
In the Jharkhand High Court
Case No : Writ Petition(S) No. 5904 of 2013

Satya Nand Sinha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 76, 89

Citation : (2015) 03 JH CK 0069

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant; Prem Pujari, J.C. to G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. Indrajit Sinha, learned counsel for the petitioner, Mr. S.P. Roy, learned counsel for the State of Bihar and Mr. Prem Pujari, learned J.C. to G.A.

2. In this writ application, the petitioner has prayed for quashing the Resolution dated 6.9.2013 as contained in Resolution No. 8215 issued by the Deputy Secretary, Road Construction Department (Respondent No. 3), whereby and whereunder a departmental proceeding has been initiated against the petitioner. It has further been prayed for a direction upon the respondents to consider the case of the petitioner for promotion to the cadre of Superintending Engineer, which is going to be held in the month of September, 2015.

3. The petitioner is an Executive Engineer, who was appointed in the Road Construction Department in the Unified State of Bihar and pursuant to bifurcation, the petitioner was allocated the State of Jharkhand. The respondent No. 3 had issued an order dated 15.01.2013, in which an explanation was called for with respect to a letter issued by the Building Construction Department, Government of Bihar, whereby and whereunder chargesheet was issued against

the petitioner. Reply was given by the petitioner to each of the charges and on receipt of the show cause, the same was forwarded to the State of Bihar as relevant records are with the State of Bihar. The Joint Secretary, Building Construction Department, vide letter dated 2.7.2013, addressed to the Superintending Engineer, Building Circle, Saharsa, in which the inquiry report was called for as in absence of the same, delay is being caused in the departmental proceeding pending in the State of Jharkhand. Vide resolution dated 6.9.2013, the disciplinary proceeding was initiated against the petitioner by the Road Construction Department, Jharkhand, Ranchi, which has been challenged in the present writ application.

4. Learned counsel for the petitioner has submitted that initiation of the departmental proceeding in terms of Memo dated 6.9.2013 was done in haste without awaiting the result of the preliminary inquiry, which is being held in the State of Bihar. It has further been submitted that the petitioner had categorically denied the charges levelled against him by giving a detailed reply and without waiting for verification of the charges levelled against him, the departmental proceeding has been initiated vide Memo dated 6.9.2013. Learned counsel for the petitioner submits that the State of Jharkhand without there being any document has initiated the departmental proceeding, which would be evident from the letter dated 3.6.2013, in which the State of Bihar was requested to supply the necessary documents. In such circumstances, there being no basis for initiation of the departmental proceeding in terms of Memo No. 8215 dated 6.9.2013, the same is liable to be quashed. It has further been submitted by the learned counsel for the petitioner that since the allegations relate to the period in which the petitioner was posted in the State of Bihar, no departmental proceeding can be initiated by the State of Jharkhand. In this context, he has referred to the judgment in the case of *State of Bihar Vs. Ashok Kumar Singh*, .

5. Learned counsel for the Respondents-State of Jharkhand, on the other hand, has submitted that the departmental proceeding has been started against the petitioner on the recommendation of the State of Bihar after considering all the facts and evidences, report of the allegations in "Prapatra K" and the disciplinary authority after reviewing the chargesheet and the allegations levelled against the petitioner, decided to initiate a departmental proceeding. It has further been submitted that since the petitioner after bifurcation was allocated Jharkhand Cadre, as such there was no illegality in initiation of departmental proceeding by the State of Jharkhand against the petitioner.

6. The respondent Nos. 4 and 5, representing the Building Construction Department, State of Bihar, have also filed a counter affidavit, in which it has been stated that a letter was received by the Building Construction Department, State of Bihar from the Vigilance Department, State of Bihar, vide letter No. 2407 dated 3.5.2011 along with a copy of the inquiry report, wherein an inquiry was conducted by the Vigilance Department with the help of Technical Examiner Cell of the Department on complains received with regard to the work in connection

with Civil Prison/Jail at Madhepura and certain irregularities were found. The Vigilance Department, accordingly, had requested that appropriate action be taken against the persons responsible for the alleged defalcation in light of the findings of the inquiry report. It has further been submitted that with respect to the work done at Madhepura Jail in 1999-2000, report was sought for from the Superintending Engineer, Building Circle, Saharsa vide letter dated 27.02.2013, in which a report was submitted by the Superintending Engineer, Building Circle, Saharsa, vide letter No. 463 dated 10.07.2014 and a copy of the inquiry report so submitted was sent to the State of Jharkhand vide letter No. 2983 dated 20.03.2015.

7. The primary thrust of the argument of the learned counsel for the petitioner is basically that the departmental proceeding has been initiated by the State of Jharkhand without there being any document to justify the initiation of the said proceedings. Much stress has also been given to the fact that the State of Jharkhand does not have any jurisdiction to initiate a departmental proceeding as the alleged incident is said to have taken place when the petitioner was posted in the State of Bihar. The initiation of the departmental proceeding was on the basis of "Prapatra K". The charges, which were levelled against the petitioner as would be evident from a perusal of "Prapatra K" took into consideration the letter of the Vigilance Department as contained in letter No. 2407 dated 3.5.2011 along with the copy of the inquiry report obtained from Technical Examiner Cell as well as letter No. 4638 dated 14.11.2011. Thus, it cannot be said that initiation of the departmental proceeding vide Memo dated 6.9.2013 was baseless and had no foundation to initiate such proceeding. The charge memo in terms of "Prapatra K" has considered within its precincts the inquiry report, as mentioned hereinbefore, and which has been shown as enclosures to the same.

8. In the case of State of Bihar v. Ashok Kumar Singh (Supra), the Hon"ble Supreme Court while considering the provisions of Sections 76 and 89 of the Bihar Re-organization Act, 2000 in respect to a vigilance case instituted much after appointed day, it was held as follows:--

"22. Part VIII of the Reorganisation Act relates to "provisions as to the services". Under Section 76 the Central Government has been empowered to give such directions to the State Government of Bihar and the State Government of Jharkhand as may appear to it to be necessary for the purpose of giving effect to the provisions of Part VIII and the State Governments are made bound to comply with such directions. By the clarifications issued from time to time, as referred to above, the State Government on whose cadre the accused officers were posted after bifurcation was directed to institute disciplinary proceedings against such officers. By Letter dated 10-7-2001 it was clarified by the Central Government that the State of Jharkhand would be the competent authority to complete pending vigilance inquiries against officers who stand allocated to the Jharkhand cadre as has already been clarified in this Department's Office Memorandum dated 20-12-2000.

26. Under Section 76, the Central Government is empowered to give such directions to the State Government of Bihar and the State Government of Jharkhand, for the purpose of giving effect to the provisions of the Bihar Reorganisation Act, the State Government is bound to comply with such directions. By Letter No. 1 Misc. 8038 of 2001 Karmik 241/01 issued by the Central Government clarification has been made regarding the pending proceedings against the IAS officers pursuant to bifurcation of the States. In the said letter a reference has been made to Letter No. 11018/2/2001-AIS(III) dated 10-7-2001 in which it was clarified by the Central Government that the Government of Jharkhand would be the competent authority to complete pending vigilance inquiries against the officers who stand allocated to the Jharkhand cadre as has already been clarified by the Central Government OM No. 13013/8/2000-AIS(I) dated 20-12-2000. The Government of Jharkhand shall also be the competent authority to take a decision regarding initiation of disciplinary proceedings or any other action based on the final report for any vigilance inquiry which may have been initiated by the Government of Bihar in respect of an officer who now stands allocated to Jharkhand cadre.

27. In view of the aforesaid Circular dated 20-12-2000 and by Letter dated 10-7-2001 read with Section 76 of the Reorganisation Act, vigilance inquiry which was initiated against the first respondent by the Vigilance Department of the State of Bihar prior to reorganisation of the State i.e. 15-11-2000, should have been transferred to the Vigilance Department of the State of Jharkhand, as the first respondent was allocated cadre of Jharkhand and was posted under the Government of Jharkhand. Therefore, it is rightly contended on behalf of the first respondent that in view of the fact that he has been allocated to the IAS cadre of the Jharkhand State since 15-11-2000 i.e. the date on which Jharkhand State came into existence, the Vigilance Department, Government of Bihar ceases to have jurisdiction to investigate against the first respondent."

9. In the aforesaid judgment, it has clearly been held that the Government of Jharkhand shall also be the competent authority to take a decision regarding initiation of a disciplinary proceeding or any other action based on the final report for any vigilance inquiry, which may have been initiated by the Government of Bihar in respect of an officer, who now stands allocated to Jharkhand Cadre. The petitioner after allocation of Jharkhand Cadre ceased to be an employee under the State of Bihar and in such circumstances, State of Jharkhand did have the jurisdiction to initiate a departmental proceeding. Even otherwise, the departmental proceeding was initiated at the instance of the State of Bihar and on the basis of an inquiry conducted into the allegations, which finds place in "Prapatra K", led to institution of Memo dated 6.9.2013. In such circumstances, therefore, it cannot be said that the State of Jharkhand does not have jurisdiction to initiate the departmental proceeding.

10. Reference may also be made to the case of Arvind Bijay Bilung v. State of Bihar and ors, reported in 2001 (2) JLJR 227, wherein three categories of

persons serving in one or other successor State were enumerated and category (i) reads as follows:--

"(i) a person serving a particular successor State having been finally allotted to serve that particular State referred to as first category." 11. The same has been answered in the following terms:--

"25 So far as first category is concerned, there should not any dispute to determine the appointing authority/appropriate authority. Such persons having finally allotted to serve a particular successor State and being posted in office in such successor State, the appointing authority will be that particular State or appropriate authority of such successor State..... " 12. Having regard to the aforesaid facts, there being no illegality in Memo dated 6.9.2013, this writ petition fails and accordingly the same is hereby dismissed.