
(2017) 01 JH CK 0241
In the Jharkhand High Court
Case No : 7538 of 2006

Shanti Thakur & Ors

APPELLANT

Vs

Most. Ukma Devi & Ors

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 01 JH CK 0241

Hon'ble Judges : Pramath Patnaik

Bench : SINGLE BENCH

Advocate : S.P.Sinha, Binod Singh

Judgement

1. In the accompanied writ petition, the petitioner has, inter alia, prayed for issuance of writ of certiorari for quashing the office order issued vide Memo no.1763 dated 02.06.2005(Annexure-5) passed by the District Superintendent of Education, Ranchi pertaining to withholding of two annual increments with cumulative effect. The petitioner has further prayed for quashing of letter no.403 dated 04.10.2006(Annexure-8) and letter no.467 dated 22.11.2006 passed by the appellate authority.

2. Sans details, the facts as delineated in the writ petition, in nutshell is that the petitioner being an Assistant Teacher while posted at Rajkiya Middle School, Krishna Nagar, Ratu Road, Ranchi, during inspection on 15.04.2005, was found absent. Thereafter, vide Memo no.991 dated 16.04.2005, memo of charge (Form "Ka") has been served to the petitioner, enquiry officer was appointed and the petitioner was directed to submit his explanation to the aforesaid charge. On perusal of the show cause reply, the respondents have passed the impugned order dated 02.06.2005 (Annexure-5 to the writ petition). Being aggrieved by the impugned order, the petitioner preferred appeal before the appellate authority, but the appellate authority on the ground of technicality has rejected the appeal vide Annexures-8 & 10 to the writ petition.

Being aggrieved by the aforesaid orders passed by the disciplinary authority as well as appellate authority, the petitioner left with no other alternative and efficacious remedy, has been constrained to approach this Court for challenging the same under Article 226 of the Constitution of India for redressal of her grievances.

3. Learned counsel for the petitioner has submitted that the impugned order of punishment withholding of two annual increments with cumulative effect being a major punishment, the second show cause ought to have been issued before infliction of punishment, but the same having not been done, the impugned order vide Annexure-5 to the writ petition is not legally sustainable. In order to buttress his argument, learned counsel for the petitioner has referred to the decision of the Hon'ble Apex Court in the case of "Kulwant Singh Gill Vrs. State of Punjab" reported in 1991 Supp(1) SCC 504, wherein the Hon'ble Apex Court has been pleased to hold that withholding of two increments with cumulative effect is a major punishment. Apart from non-issuance of second show cause, learned counsel for the petitioner by referring to supplementary affidavit has referred to Annexure-11, the Circular dated 4.4.1992, which envisages that the female employees are entitled to get two days special casual leave in a month. Learned counsel for the petitioner submits that since the respondent-authorities have not resorted to full-fledged departmental proceeding amounting to breach of principle of natural justice that too non-supply of enquiry report, causing gross prejudice to the petitioner because the supply of enquiry report is a sine qua non for a just and fair departmental proceeding.

4. A counter affidavit has been filed on behalf of respondents controverting the averment made in the writ petition. Mr. Binod Singh, learned S.C.(L & C) has more or less reiterated the submission made in the counter affidavit. Mr. Binod Singh, learned counsel for the respondents by referring to the counter affidavit submits that since the petitioner was found absent and on the basis of the enquiry held by the disciplinary authority, a minor punishment has been inflicted as envisaged vide Annexure- A to the counter affidavit. Therefore, no second show cause notice was required to be served on the petitioner.

5. After giving my anxious consideration to the submission made by the parties and on perusal of the records, I am of the considered opinion that the impugned order of withholding of two annual increments with cumulative effect vide Annexure-5 being confirmed by the appellate authority vide Annexures-8 & 10 do warrant interference by this Court due to the reasons stated here-in-below. Admittedly, in the instant case, the order of punishment of withholding of two annual increments with cumulative effect has been passed by the respondents, which is a major punishment in view of the decision rendered by the Hon'ble Apex Court in the case of Kulwant Singh Gill(supra) and there is no dispute over the proposition that withholding of two annual increment is a major punishment. After passing of the order of major punishment, the respondent-authorities ought to have adhered to the procedure meant for major punishment, but the same

having not been done, the impugned orders are liable to be interfered with.

On perusal of the counter affidavit, it appears that respondents were under the mistaken notion that withholding of two increments with cumulative effect is a minor punishment, but the view as expressed by the respondents has already been clarified by the aforesaid decision, though the same has not found place in the Rule. However, considering all aspects of the matter, it appears that since there has been breach of principle of natural justice in relation to non-supply of enquiry report and non-submission of second show cause notice prior to infliction of punishment, the impugned orders cannot be legally sustainable.

6. Viewed thus, the impugned order dated 02.06.2005 (Annexure-5) and the orders dated 04.10.2006 (Annexure-8) and 21.11.2006(Annexure-10) are hereby quashed and set aside. However, the quashment of appellate order will not preclude the respondent authorities for issuing second show cause notice. In that eventuality, the respondents may proceed with the matter afresh by giving second show cause notice and conclude the proceedings as expeditiously as possible preferably within a period of three months from the date of issuance of second show cause notice.

7. With the aforesaid observation, this writ petition stands disposed of.