
(2009) 08 JH CK 0060
In the Jharkhand High Court

Shri Gabarial Rabidas

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Citation : (2009) 08 JH CK 0060

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. The prayer of the petitioner in this writ petition is for direction to the respondents to reinstate him in service on the post of Panchayat Sewak after quashing the order of the Deputy Commissioner, Sahebganj dated 15.12.1997 as contained in Annexure-1 to the writ petition as well as the order of the Commissioner, Santhalpargana Division dated 15.03.2003 in Service Appeal No. 5/1999 as contained in Annexure-1/A to the writ petition, by which, the order of termination passed against the petitioner by the Deputy Commissioner was confirmed.

3. The case of the petitioner is that he was posted in Pokharia Panchayat as a Panchayat Sewak in the district of Sahebganj. He was served with an order dated 14.03.1996 of the Deputy Commissioner wherein it was stated that 80% of the amount under Jawahar Rojgar Yojna was advanced to different contractors, by playing fraud through back dating, Rs. 77,000/- in collision with Mukhiya and, therefore, the petitioner was asked to submit his explanation as to why disciplinary proceedings be not initiated against him and a criminal case be not lodged against him.

4. The petitioner submitted his explanation stating therein that he has acted on the direction and orders of the Block Development Officer, Taljhari as well as of the D.D.C. Sahebganj. He denied having advanced any amount by backdating or

playing fraud and it was stated by him that after due permission of the Block Development Officer and D.D.C, money as advance was paid.

5. The explanation submitted by the petitioner was not accepted and then he was suspended. The departmental proceeding was initiated and chargesheet was served on him as contained in Annexure-4. Subsequently, the petitioner was served with an order dated 28.10.1997 passed by the Deputy Commissioner, Sahebganj as contained in Annexure-6 informing the petitioner that the charge against him has been established and, therefore, he may submit his second show-cause as to why he should not be dismissed from the service.

6. The petitioner submitted his second show-cause explaining the entire circumstances and, thereafter, the order as contained in Annexure-1 dated 15.12.1997 was passed by the Deputy Commissioner dismissing the petitioner from service as well as to recover the amount defalcated by him.

The petitioner, thereafter, preferred departmental appeal before the Commissioner which was also dismissed vide Annexure-1/A by order dated 15.03.2003. It is these two orders which are under challenged in this writ petition.

7. Mr. Ajit Kumar, learned Counsel appearing for the petitioner submitted that from perusal of the order as contained in Annexure-1 passed by the respondent No. 4 i.e. the disciplinary authority, it would appear that he has found the petitioner guilty on the basis of opinion and report of the Block Development Officer which was called for by him, in course of inquiry but the same was not supplied to the petitioner, therefore, the petitioner could have any reply against the opinion/report of the Block Development Officer which was heavily relied for finding the petitioner guilty. It is further submitted that as per the charge, the Deputy Commissioner had passed an order on 11.09.1995 directing not to pay any advance money but that order of the Deputy commissioner dated 11.09.1995 was never served on the petitioner nor the petitioner had any knowledge of such order. Even on demand, the said order was not supplied to the petitioner. Therefore, the petitioner was greatly prejudiced due to non supply of those relevant and important documents since those documents were used against the petitioner for finding him guilty.

It is further contended that neither copy of the inquiry report was supplied to the petitioner nor he was afforded reasonable opportunity to adduce evidence nor he was allowed to cross examine the witnesses and, thereby, in most unfair manner, inquiry was conducted and, therefore, the impugned order dismissing the petitioner from service on such an illegal enquiry report is unsustainable.

8. Mr. Manoj Tandan, learned Counsel for the state could not show that either the copy of the inquiry report or copy of the order of the Deputy Commissioner dated 11.09.1995 directing not to pay any money in advance to the contractors or other documents as demanded by the petitioner were supplied to him.

9. From perusal of the impugned orders contained in Annexures-1 and 1/A to the writ petition, it appears that both the authorities have taken into consideration the report of the Block Development Officer against the petitioner but that document also, though demanded, was not supplied to the petitioner. Therefore, in my view, the inquiry so conducted against the petitioner cannot be said to be fair since reasonable and sufficient opportunity was not afforded to the petitioner to defend himself.

10. Consequently, the order passed by the Deputy Commissioner, Sahebganj dated 15.12.1997 as contained in Annexure-1 as well as the order of the Commissioner, Santharpargana Division dated 15.03.2003 in Service Appeal No. 5/1999 as contained in Annexure-1/A dismissing the petitioner from service and directing to recover the alleged defalcated amount is held to be illegal and unsustainable.

11. Accordingly, this writ petition is allowed. The order as contained in Annexures-1 and 1/A are hereby quashed and the matter is remanded back to the concerned respondents to conduct the departmental proceedings afresh after giving reasonable and sufficient opportunity to the petitioner to defend himself. The inquiry proceeding should be concluded preferable within a period of six months.