
(2015) 11 JH CK 0006
In the Jharkhand High Court
Case No : W.P.(S) No. 6060 of 2012

Shyamdeo Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 JLJR 130

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Manoj Tandon, Advocate, for the Appellant; Sumir Prasad, S.C. II, for the Respondent

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter alia, prayed for quashing office order dated 25.02.2012, passed by the District Superintendent of Education-cum-Sub-Divisional Educational Officer, Koderma, whereby two departmental proceeding initiated against the petitioner has been amalgamated and the petitioner has been put under suspension till the criminal cases are decided; and for quashing order dated 31.10.2013 whereby three major punishments; (i). compulsory retirement (ii). 10% pension has been reduced and (iii). petitioner shall not be entitled for any salary for suspension period except subsistence allowance, has been inflicted upon the petitioner.

2. Sans details, the facts as disclosed in the writ petition, in brief, is that the petitioner was appointed as an Assistant Teacher, Middle School, Mirganj on 23.05.1987. Thereafter, the petitioner continued to discharge his duties to the utmost satisfaction of the authorities concerned and till 2010 no departmental proceeding was initiated against the petitioner. But due to some family dispute and inimical terms with some people, few criminal cases were lodged against him, which were mainly related with sale of lands, for which, the petitioner was taken into custody and as such he was put under suspension by office order

dated 12.03.2007, but, later on, on his release on bail, his suspension was revoked vide order dated 17.12.2007. Subsequently, for two more cases, the petitioner was taken into custody and again he was put under suspension vide office order dated 30.03.2009, but, again on his release on bail, his suspension was revoked vide office order dated 08.06.2009. Thereafter, the petitioner started to discharge his duties as In-charge Headmaster. But to the utter misfortune, the petitioner was put under suspension by way of punishment vide order dated 24.06.2010 in contemplation of a departmental proceeding. Thereafter, the petitioner was slapped with a charge-sheet as contained in Memo dated 17.07.2010, whereby four charges were levelled against the petitioner. Being aggrieved, the petitioner moved before this Hon"ble Court by way of filing W.P. (S) No. 3531 of 2010, which was withdrawn since the departmental proceeding was on the verge of completion. Thereafter, the Block Education Extension Officer, Jai Nagar, after enquiry of the said charges, submitted his enquiry report on 04.09.2010, whereby the petitioner was exonerated of all the four charges.

3. But, again after one year, another charge-sheet was served upon the petitioner vide memo No. 31.12.2010 alleging that six criminal cases are pending against the petitioner. In response thereof, the petitioner filed show-cause on 21.1.2011 denying the charges levelled against him. But when the departmental proceeding was kept pending for an indefinite period and no decision was taken on the enquiry report dated 04.09.2010, the petitioner again knocked the door of this Court by filing W.P. (S) No. 6235 of 2011, which was disposed of vide order 02.01.2012 with a direction to the disciplinary authority to pass final order within eight weeks, so far as first departmental proceeding is concerned, from the date of production of copy of the order and so far second proceeding is concerned, the same be expedited and concluded within a reasonable period. Since no final order was passed within the stipulated period, the petitioner filed Cont. Case (C) No. 323 of 2012 bringing on record the minutes of the meeting dated 18.02.2012 and office order dated 25.02.2012 passed by respondent No. 3, which was dropped with a liberty to challenge office order dated 25.02.2012.

4. As such, the petitioner filed the present writ application, challenging the office order dated 25.02.2012, whereby a decision was taken to keep the petitioner under suspension till the final order is passed by the Court in Criminal Cases. However, during pendency of this writ application, respondent No. 3 - the District Superintendent of Education-cum-Sub-Divisional Educational Officer, Koderma issued an order dated 31.10.2013, whereby three major punishment, as aforesaid, has been awarded.

5. Being aggrieved by order dated 25.02.2012 and order dated 31.10.2013, the petitioner left with no alternative, efficacious and speedy remedy has approached this Court invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of his grievances.

6. Per contra, counter affidavit has been filed on behalf of respondent Nos. 2 to 4

repelling the averments made in the writ application. It has been stated that initially the petitioner was put under suspension on 12.03.2007, which was revoked on 17.12.2007, again suspended on 30.03.2009 which was revoked on 08.06.2009. It has been stated that as the departmental proceeding was initiated against him, the petitioner was put under suspension on 24.06.2010 and on 17.07.2010, charge-sheet was issued against him and four charges were framed against him. It has been submitted another departmental proceeding was initiated against the petitioner on the ground that some criminal cases, pertaining to cheating, forgery, criminal conspiracy, misappropriation of money and for other several serious charge of taking huge amount from the persons on the plea of providing job, are pending against the petitioner. It has been submitted that as a teacher, the petitioner never performed his duty sincerely since 2007 and allegations of committing criminal offence were repeatedly made against him. It has been submitted that petitioner is a habitual offender and as such, he cannot teach in real sense.

7. Heard Mr. Manoj Tandon, learned counsel for the petitioner and Mr. Sumir Prasad, learned S.C. II for the respondents.

8. Learned counsel for the petitioner has strenuously urged that in the first departmental proceeding, the enquiry report dated 04.09.2010 was submitted exonerating the petitioner of all the charges and the Enquiry Officer recommended for revocation of the suspension of the petitioner with a warning but the disciplinary authority decided to keep him under suspension till the criminal cases are pending without assigning any reason for deferring with the views taken by Enquiry Officer.

9. In support of his submission, learned counsel for the petitioner referred to a decision rendered in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , wherein the Hon'ble Apex Court has held that in case of difference of disciplinary authority by the enquiry officer, he has to record the reasons for disagreement.

10. Learned counsel further submitted that so far as second set of charges is concerned, which relates to pendency of criminal cases against the petitioner, during pendency of the writ application, the petitioner has filed an I.A. No. 4865 of 2015, enclosing the judgment of all the criminal cases, wherein the petitioner has been honorably acquitted. Learned counsel for the petitioner further submitted that even the learned Government Pleader has opined that none of the cases pending against the petitioner are related to Education Department. Now, the petitioner has been acquitted in all the criminal cases, so, the second set of charge goes in view of the acquittal of the petitioner in all the criminal case.

11. Learned counsel for the petitioner further submitted that the District Education Establishment Committee headed by Deputy Commissioner, Koderma is the competent authority, as per Rule 8(2) of the Primary Teachers Service Rules, 1994, to impose punishment whereas the impugned order has been

passed by the District Superintendent of Education-cum-Sub-Divisional Educational Officer, Koderma in clear infraction of the Rules.

12. On the point of availing the alternate remedy of appeal, learned counsel for the petitioner submitted that even if there is a provision of appeal, the writ Court is not denuded of the power to entertain the writ petitioner in view of the decisions rendered in case of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, .

13. Learned counsel for the respondents submitted that on perusal of impugned order at Annexure 12, it is evident that the District Education Establishment Committee has taken a decision for imposition of impugned punishment, so the contention of the petitioner that relevant Rules has not been followed while imposing impugned punishment, is not tenable. It has further been submitted that the impugned order passed by the disciplinary authority is appealable order as per Rule 9(3) of the Primary Teachers Service Rules, 1994. Learned counsel for the respondents has further submitted that in view of the seriousness of the charges and pendency of criminal cases, just punishment has been awarded, which does not call for any interference by this Hon"ble Court.

14. After having heard learned counsel for the respective parties at length and on perusal of the relevant documents on record, I am of the considered view that the impugned orders dated 25.02.2012 and 31.10.2013 are not legally sustainable for the following facts, reasons and judicial pronouncements:

(i). In the instant case, two charge-sheets, issued vide memo No. 17.07.2010 and 31.12.2010, have been framed against the petitioner, for which two different departmental proceedings were initiated, though later on vide order dated 25.02.2012 they were amalgamated.

(ii). In the first departmental proceeding, four charges were leveled against the petitioner:

(a). Without notice, the school was closed on 19.06.2010;

(b). During the financial year 2008-09, the school building had not been completed within time;

(c). Misappropriation of some amount of Village Education Committee; and

(d). Though he was put under suspension for going to jail twice but even then he has been alleged to have misappropriated the fund.

After framing of charges, enquiry officer was appointed, who submitted his report dated 04.09.2010 exonerating the petitioner of all the four charges and recommended for revocation of the suspension of the petitioner with a warning but the disciplinary authority decided to keep him under suspension till the criminal cases are pending without assigning any reason for deferring with the views taken by Enquiry Officer.

(iii). So far as second departmental proceeding is concerned, which was initiated on the charge of pendency of criminal cases against the petitioner, it culminated into issuance of impugned order of punishment dated 31.10.2013. On perusal of which, it appears that the conducting officer has opined that any decision on the delinquent is to be taken after the outcome of criminal cases, pending against the petitioner in Court and till then he may be kept under suspension. In the said order, it is further stated that all the cases relates to his personal life and does not relate with this department. In the said order, it is further opined that though matter is pending before the Court and his guilt is not proved, yet considering his misdeeds, major punishment, as aforesaid was imposed.

But, now the petitioner has been acquitted in all the criminal cases pending against him. Hence, in the changed scenario, the case of the petitioner ought to have been considered afresh in view of the acquittal in all criminal cases pending against the petitioner, by the disciplinary authority. Moreover, the disciplinary authority while inflicting the punishment has not given the reasons for disagreement with the views taken by enquiry officer, which has vitiated the entire proceeding and further prior to infliction of major punishment no notice for proposed punishment has been served upon the petitioner, which has also caused serious prejudice to the petitioner.

15. In view of the above facts, reasons and judicial pronouncements, the impugned orders dated 25.02.2012 and 31.10.2010 are hereby quashed and the matter is remitted to the disciplinary authority to consider the case of the petitioner afresh in view of the acquittal of the petitioner in criminal cases and pass appropriate orders in accordance with law, taking into account the observations made in the foregoing paragraphs, within a "reasonable time preferably within four months from the date of receipt/production of copy of this order.

16. With the aforesaid observations and directions, this writ petition stands disposed of.