
(2003) 08 JH CK 0036
In the Jharkhand High Court
Case No : W.P.S. No. 66 of 2002

Sita Ram Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 347

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Jitendra Nath, for the Appellant; Advocate General, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. Petitioner seeks direction upon the respondents to treat the period of his suspension i.e. from April 1986 to November 1990 on duty and to pay full salary and allowance for the said period.

3. It appears that in the year 1986 while petitioner was posted as Officer-in-Charge of Patherdih Road-Police Station, a departmental proceeding was initiated against him and punishment by way of two Black Marks forfeiting the pay and allowance was passed. The said order was confirmed by D.I.G. of Police, Patna in the departmental appeal filed by the petitioner. The said order was challenged by the petitioner in CWJC No. 1795 of 1991 (R). A Division Bench of the Patna High Court quashed the order of punishment and directed the respondents to give a reasonable opportunity to the petitioner to cross examine the witness already examined by the enquiring officer behind his back and to reconduct the departmental proceeding. Respondents instead of reconducting the proceeding called upon the petitioner to show cause as to why punishment of black marks be not enhanced to the punishment of dismissal from the service. Petitioner then

moved this Court by filing MJC No. 318 of 1992 (R). A Division Bench of this Court disposed of the said contempt case, on 6.10.93 by passing the following order :

"The peculiar manner in Which Government cases are conducted would appear in this case. There is an order passed on 5.12.91 by a Division Bench of this Court. The writ application was allowed and the order of punishment passed by the Superintendent of Police, Railways, Dhanbad and the order passed by the D.I.G. Railways on appeal were quashed and the Enquiry Officer was directed to afford a reasonable opportunity to the petitioner to cross examine the live witnesses and conclude the enquiry as expeditiously as possible.

It is pointed out that such order was passed on the basis of averments made by G.P.II appearing on behalf of the respondents including the contemnor herein that he has gone through the record thoroughly and has found that no notice or letter was served on the petitioner before the enquiring officer examined five of the witnesses namely, D.P. Singh, Bhola Nath Ojha, C. Moitra and A.K. Haldear.

In spite of that the contemnors called upon the petitioner to show cause against dismissal from service in the departmental proceeding by enhancing punishment already quashed. This was done by the letter dated 4.12.92 issued by the S.P. Rly Police.

In the show cause filed, Rakesh Prasad Singh, S.P. Railway, Dhanbad has stated that he has no knowledge of the order passed by this Court and it was disposed of on 5.12.91. It is stated that opposite party No. 1 had no knowledge of the order passed by this Court. It is stated that only when the contempt notice was issued then it came to their knowledge that such an order has been passed.

We feel that this is a very sad state of affairs. The order was passed not ex parte but in presence of the lawyer for the respondents and on the basis of the statement made by the learned lawyer appearing for the respondents nothing has been stated whether the learned lawyer of the respondents communicated this order or not and if not, why.

Under such circumstances, we shall not dispose of this application except for setting aside the order passed by the S.P. Rly, Dhanbad. Accordingly, the order dated 4.9.92 contained, in annexure-3-to the show cause, is hereby quashed.

We direct that a enquiry be made by the Chief Secretary to the following effect :

- (a) Whether any notice of the order, violation of which is complained of, was received by the S.P. Rly, Dhanbad or not.
- (b) Whether such order was communicated by G.P.II in whose presence this order was passed and
- (c) Upon submission of G.P.II, why it was not communicated by his office or at the instance of G.P.II.

Let the report be submitted one week after the vacation. Let a copy of this order along with copies of relevant papers be sent to the Chief Secretary.

Let it be recorded that this order has been passed in presence of learned G.P.II."

3. After the aforesaid order was passed in the contempt case neither the departmental proceeding was reconducted nor any final order of punishment has been passed till date. However, petitioner joined his service in November, 1990 and since then he has been working. In the counter affidavit, it is stated that file of the proceeding was sent to the Superintendent of Police, Bokaro in 1993 and it was received by the Superintendent of Police but the file is still traceless. However, respondents called the petitioner vide memo-dated 24.7.93 to furnish documents but he did not turn up. For better appreciation paragraph 12 and 13 of the counter affidavit is reproduced herein below :

"Para 12 : That it is further stated and submitted that the file of the proceeding was sent to the Superintendent of Police, Bokaro, vide deponent's office memo No. 81(2)/RO, dated 15.2.1993, which is being enclosed as Annexure-D to this counter affidavit and vide Superintendent of Police, Bokaro, memo No. 812/RO, dated 30.3.2003 it was received in his office but is traceless at present.

Para 13 : That it is further stated and submitted that the respondent called for the petitioner through the Superintendent of Police, Chaibasa, along with the related papers for disposal of his claim regarding suspension period vide letter memo No. 588 Sa.Sa., dated 24.7.2003 but the petitioner refused to come and since the concerned file is missing from the office of the Superintendent of the Police, Bokaro, the respondent is not in a position to take appropriate decision."

4. It is, therefore, clear that how carelessly and negligently respondents have proceeded with the matter. Admittedly, neither proceeding was reconducted nor any notice was given to the petitioner excepting the notice-dated 24.7.2003. In that view of the matter, I am of the opinion that petitioner must get his salary for the period that he was put under suspension from April, 1986 to November, 1990.

5. For the aforesaid reasons, this writ application is allowed and the respondents are directed to release the salary minus the subsistence allowance, if paid, to the petitioner for the period April 1986 to November 1990.