
(2012) 07 JH CK 0098

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6848 of 2011

Smt Rita Devi @ Rita Kumari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : (2012) 4 JLJR 148

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Anjani Kumar Verma, for the Appellant; Ajit Kumar (AAG), for the Respondent

Final Decision : Allowed

Judgement

D.N. Patel

1. In this writ petition, the petitioner is challenging the order dated 10.11.2010, annexed as Annexure-6 to the memo of petition, passed by the Deputy Development Commissioner, Deoghar as well as the order dated 07.10.2011 passed by the Deputy Commissioner, Deoghar which is annexed as Annexure 10 to the memo of petition. Counsel for the petitioner submitted that petitioner was absent only for a day i.e. 12.10.2010. and for that, the services of the petitioner has been terminated. The punishment imposed upon the petitioner is disproportionate to the main charge of absentism leveled against the petitioner. The petitioner is serving as Anganbari Sevika since 04.09.2009. Moreover, the said show cause notice is annexure-4 to the memo of petition, whereas looking to the order of termination an Annexure-6, several new allegations have been leveled against the petitioner. In 3rd paragraph of the Annexure-6, several new reasons have been given which has never been mentioned in the show cause notice given to the petitioner and, therefore, the impugned order is travelling beyond the show cause notice and hence deserves to be quashed and set aside. The order dated 07.10.2011, which is annexed as Annexure-10 to the memo of petition, also deserves to be quashed and set aside, as no proper opportunity of

being heard has been given to the petitioner for the several allegations which are mentioned for the first time in the termination order at Annexure-6 to the memo of petition and for all those allegations, no show cause notice was ever given to the petitioner.

2. Counsel for the respondents submitted that a detailed show cause notice was given on 21st October, 2010 which is at annexure-4 to the memo of petition and thereafter adequate opportunity of being heard was given to the petitioner and ultimately the order of termination was passed on 10.11.2010 which is at annexure-6 to the memo of petition. This order was also confirmed before the appellate authority namely Deputy Commissioner, Deoghar and the appeal was dismissed vide order dated 07.10.2011, which is annexed as Annexure - 10 to the memo of petition, and, therefore, this petition is not entertainable against a concurrent finding of fact.

3. Having heard Learned Counsel for both the sides and looking to the facts. and circumstances of the case, I hereby direct to quash and set aside the order passed by the Deputy Development Commissioner, Deoghar dated 10.11.2010, at Annexure-6 to the memo of petition, as well as the order passed by the Deputy Commissioner, Deoghar dated 07.10.2011, which is at annexure-10 to the memo of petition, mainly for the following reasons:-

(I) The present petitioner was working as Anganbari Sevika at Jhunaki Anganbari Centre situated within the district of Deoghar since 04.09.2009. Thereafter the petitioner was working honestly, diligently and promptly and never any show cause notice was given to the petitioner.

(II) It further appears that on 12.10.2010 petitioner was absent from the said Anganbari Centre. On the said date, a team of high ranking officers of the State visited Anganbari Centre of the petitioner and as it was found closed, a show cause notice was given on 21st October, 2010 which is at annexure-4 to the memo of petition. The allegation leveled against the petitioner was about absentism for one day; Moreover, it has been stated in the show cause notice that the villagers have confirmed that the Anganbari Centre is closed repeatedly and petitioner is misappropriating the food grains which is meant for children. The show cause notice was replied by the petitioner wherein the allegations were denied by the petitioner. It appears that the explanation given by the petitioner is that Anganbari Centre was closed by the petitioner at 1.00 p.m. and she had gone to home. Otherwise, it was open in the morning. The team of high ranking officers came, at 2.30 p.m. at the Anganwari Centre and, therefore, it was found closed. Be that as it may, looking to the termination order at annexure-6 to the memo of petition passed by the Deputy Development Commissioner, Deoghar dated 10.11.2010, it appears that thereafter additional allegations were leveled in its termination order, like the petitioner is beating the children. Moreover, in a project, namely I.C.B.C., the petitioner is not properly working for these. important project Nobody knows what is this allegation. Nothing has been mentioned about these allegations. All these allegations are not justified as to

who has supported the allegations of the respondents and who has given what evidence. Nothing is reflected in the show cause notice. The termination order is travelling beyond the show cause notice., which is not permissible in the eyes of law.

4. From all these facts, there is grave violation of principles of natural justice. More ever, it appears that for a day's absentism, the services of the petitioner can not be terminated looking to the explanation given by the petitioner. Moreover, several allegations have been leveled against the petitioner and it appears that some villagers have given some statements. Though the respondents have relied upon the statements given by the villagers, copy of the statements or summary of the statements have not been supplied to the petitioner. Thus, the document relied upon by the respondents have not been supplied to the petitioner. Therefore, this a grave violation of principle of natural justice. In view of ail these facts, the "order passed by the Deputy Development Commissioner, Deoghar dated 10-11.2010, which is annexed at annexure-6 to the memo of petition, deserves to be quashed and set aside. The order an annexure-10 to the memo of petition dated 07.10.2011 is a consequential order passed by the appellate authority, namely the Deputy Commissioner, Deoghar dismissing the Appeal filed by the petitioner. Consequently both these orders i.e. order at Annexure-6 to the memo of petition dated 10.11.2010 passed by the Deputy Development Commissioner, Deoghar as well as the order dated 07.10.2011 annexed, as Annexure-10 to the memo of petition, deserve to be quashed and set aside.

5. Looking to the appellate order, one more allegation which is neither mentioned in the show cause notice, nor mentioned in the order of the Deputy Development Commissioner, Deoghar. The said allegation is that the petitioner has cleared matriculation examination but this is not knowing to the petitioner from which school she has cleared her matriculation examination. Thus, it appears that the Deputy Commissioner, Deoghar is carrying some doubt in his mind regarding non-clearance of matriculation examination by the petitioner. It ought to have been kept in the mind of the officers of the State Government that whenever they are terminating one employee, accurate reasons should have been given in the show cause notice. No reason can be added in the termination order which is not referred in the show cause notice, because if this type of defective order is allowed to be passed without giving any proper opportunity of being heard to the delinquent, factually wrong things were mentioned in the impugned order because the petitioner has not given any explanation for that allegation.

6. Looking to the aforesaid facts and circumstances, it appears that the impugned orders are based on presumption and surmises. There is no evidence with the respondents, nor adequate opportunity of being heard was given to the petitioner for allegations referred in both the impugned orders. I, therefore, quash and set aside both the order i.e. the order at annexure-6 to the memo of petition dated 10.11.2010 passed by the Deputy Development Commissioner,

Deoghar as well as the order dated 07.10.2011 which is at annexure to the memo of petition, passed by the Deputy Commissioner, Deoghar. However, liberty is reserved with the respondents to take action in accordance with law and at least after giving adequate opportunity of being heard to the petitioner for the allegations which are leveled in the termination order at annexure-6 as well as in the appellate order at annexure-10 to the memo of petition. This writ petition is allowed and disposed of accordingly.