
(2013) 07 JH CK 0117
In the Jharkhand High Court
Case No : WP (S) No. 538 of 2013

Sri Dinesh Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 409, 420, 467, 468

Citation : (2013) 3 JLJR 567

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Sachin Kumar, for the Appellant; Saket Upadhayay, for the Respondent

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court seeking quashing of order dated 24.12.2012 whereby an order of punishment, "withholding six increments with cumulative effect, and no promotion to the petitioner in future", has been passed. The brief facts of the case are that, the petitioner joined on deputation in the year, 2005 as junior engineer and by order dated 30th June, 2011 he was put under suspension. Charge Memo dated 20th September, 2011 was served upon the petitioner on the allegation that he was negligent in supervision of the work in the construction of bridge over south Koel river. Earlier the petitioner had moved this Court challenging order dated 30th June, 2011 whereby, the petitioner was put under suspension and the writ petition was disposed of by order dated 28.8.2012 with a direction to the respondents to expedite the departmental proceeding against the petitioner preferably within a period of six months. The order dated 24.12.2012 has been passed by the Deputy Secretary, Rural Development Department, Government of Jharkhand whereby the penalty as noticed above has been imposed upon the petitioner. Being aggrieved by the penalty. order, the petitioner has approached this Court by filing the present writ petition.

2. A counter-affidavit has been filed in which it has been stated that the

petitioner was to supervise the work of the super structure and the quality of super structure work was found poor by the two enquiry committees. The petitioner did not submit quality control report nor any documentary evidence indicating that proper supervision was done by the petitioner. It has further been stated that a First Information Report was lodged against the petitioner being Gumla P.S. Case No. 267 of 2011 under Sections 467, 468, 471, 472, 420, 409 & 120B of the Indian Penal Code.

3. Heard learned counsel for the parties and perused the documents on record.

4. Learned counsel appearing for the petitioner has raised two-fold contentions namely, (i) the proceeding against the petitioner was initiated under Rule 55-A of the Civil Services (Classification, Control and Appeal) Rules, 1930 however, major penalty has been imposed upon the petitioner without conducting a full-fledged enquiry and, (ii) even though the petitioner has been exonerated by the enquiry officer before imposing major penalty upon the petitioner, no second show-cause notice was given to the petitioner.

5. Mr. Saket Upadhyay, learned counsel appearing for the respondents while reiterating the stand of respondents in the counter-affidavit, submits that the petitioner was involved in super structure work and he supervised the work for a short period in 7th and 8th stage of construction and the quality was not found good and an enquiry was conducted in the matter. The competent authority has rightly imposed the penalty of withholding six increments with cumulative effects and it has further been ordered that no promotion in future would be given to the petitioner.

6. A perusal of the documents on record would indicate that the petitioner has raised specific plea in paragraph Nos. 18 & 22 of the writ petition which are as under--

18. That the petitioner states and submits that after order passed by this Hon"ble Court, the enquiry officer appears to have submitted its enquiry report exonerating the petitioner from the charges leveled against the petitioner. The copy of the enquiry report was never made available to the petitioner.

22. That no full-fledged departmental enquiry was conducted by the respondents and the major punishment have been awarded only by issuing show cause notice to the petitioner under Rule 55-A which is not permissible in the eye of law.

7. In the counter affidavit of the respondent, paragraph Nos. 18 & 22 of the writ petition has been dealt with by the respondents as under:--

21. That in reply to the prayers made in Para 18 of the writ petition under reply, it is humbly stated and submitted that the enquiry officer did not exonerate for poor quality and improper supervision. Rather, petitioner did not refute the above charge nor submitted any document. The petitioner emphasized about not involvement in foundation work.

25. That in reply to the prayers made in para 22 of the writ petition under reply, it is humbly stated and submitted that detail proceeding has been drawn.

8. It appears from the impugned order that the enquiry officer has exonerated the petitioner of the charges levelled against him and the petitioner has taken a stand that no second show-cause notice has been issued to the petitioner nor a full-fledged enquiry was conducted after supplying necessary documents and providing the petitioner an opportunity to defend himself. From the counter-affidavit filed by the respondents, it appears that samples for testing the work, have been sent to the laboratory and the report is still awaited and therefore, I find that it cannot be conclusively held that the quality of work was not good. In any event, the charge against the petitioner is of not supervising the work properly, and I do not find any charge of collusion levelled against the petitioner. The specific stand taken by the petitioner in the writ petition has not been controverted by the respondents. I find force in the contention raised by the learned counsel for the petitioner that without conducting a departmental proceeding in accordance with law, the respondents could not have inflicted major punishment upon the petitioner and before inflicting major punishment, a second show-cause notice was required to be given to the petitioner. In view of the aforesaid, the writ petition is allowed. The impugned order dated 24.12.2012 is hereby quashed.