
(2009) 07 JH CK 0068
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1238 of 2008

Suman Kumar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Citation : (2009) 07 JH CK 0068

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Baleshwar Yadav, for the Appellant; Manoj Tandon, (S.C.-II), for the Respondent

Final Decision : Allowed

Judgement

D.N. Patel, J.—Learned Counsel appearing for the petitioner vehemently submitted that the impugned order passed by the District Superintendent of Education, Hazaribagh dated 21st April, 2006 (Annexure-3 to the memo of the present petit on) deserves to be quashed and set aside mainly for the reason that only for one day's absenteeism i.e. on 12th May, 2004, the petitioner has been punished by stopping two increments with cumulative effect. The petitioner has been suspended for a period of approximately two years and that too without payment of subsistence allowance. Thus, shockingly disproportionate is the punishment. Secondly, it is submitted that inquiry report has not been supplied to the petitioner and no adequate opportunity of being heard has been given to the petitioner and, therefore, this petition may be allowed and all the consequential benefits may be given to the petitioner.

2. I have heard learned Counsel for the respondents, who has submitted that the petitioner being an employee of the Education Department can not remain absent without permission and, therefore, strict view has been taken after holding inquiry against the present petitioner and looking to the nature of the duties of the present petitioner, the punishment inflicted upon him is absolutely inconsonance with the misconduct and, therefore, the petition deserves to be

dismissed.

3. Having heard learned Counsels for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order passed by respondent No. 5 dated 21st April, 2006 (Annexure-3 to the memo of the present petition) for the following facts and reasons:

(i) The present petitioner was working as a teacher in the primary school at Dahori and the petitioner was working honestly, diligently, sincerely and to the satisfaction of the respondents since long. Never any memo for the misconduct has been issued in the past to the petitioner nor any action has been initiated against the present petitioner. Spotless is the career of the present petitioner as a teacher.

(ii) It appears from the facts of the present case that the present petitioner was absent only for one day, on 12th May, 2004. It also appears from the facts of the case that the present petitioner was sick from 10th May, 2004 and, therefore, he was unable to attend the services on 12th May, 2004.

(iii) It also appears from the facts of the case that the explanation was given much earlier in point of time by the present petitioner on 7th July, 2005, as per Annexure-2. Even otherwise also, looking to the absenteeism only for one day, punishment has been inflicted vide the impugned order (Annexure-3) whereby two increments have been stopped w'th all future effects and the petitioner was suspended for two long years and nothing has been paid for the long two years. It is absolutely disproportionate to the nature of misconduct. Respondent No. 5 has not applied his mind upon the arbitrary action or quantum of punishment for one day's absenteeism of a teacher due to sickness. Suspension continued for two years and further punishment of stoppage of two increments with all future effect has been awarded without any application of mind. The high ranking officer of the State of Jharkhand is also not watching the actions initiated by respondent No. 5 upon a teacher. It is a pious duty vested in the State of Jharkhand that when the powers are vested in the subordinate officers, they must be utilized in accordance with law. Powers ought not to have been utilized so arbitrarily as it tantamounts to thoroughly abuse of the powers. The Secretary of the concerned Department should have taken note of such misuse of power by respondent No. 5. The suspension of a teacher for two years is grossly or shockingly a disproportionate punishment for the absent only for one day and that too, on medical ground. Only on this ground, I hereby quash and set aside the impugned order passed by respondent No. 5 dated 21st April, 2006 (Annexure-3) and because of this type of long suspension of a teacher for two years; students of the concerned school must have suffered.

4. I hereby direct Registry to send a copy of this petition as well as order of this Court to the Secretary, Human Resources Development Department, State of Jharkhand, Ranchi.

5. It is expected from the Secretary that he shall issue necessary circulars/orders

in his Department about the nature of punishment be imposed and in what proportion it can be imposed so that arbitrariness in usage of the powers can be avoided.

6. As a cumulative effect of the aforesaid facts and reasons, I hereby allow this petition and the impugned order at Annexure-3 passed by respondent No. 5 dated 21st April, 2006 is hereby quashed and set aside.

7. The petitioner is entitled for all the consequential benefits, which shall be paid to the petitioner within a period of four weeks from the date of receipt of a copy of the order of this Court. Compliance of this order will be monitored by the Secretary, Human Resources Development Department. State of Jharkhand, Ranchi.

8. The petition is, hereby, allowed to the aforesaid extent.