
(2013) 10 JH CK 0051
In the Jharkhand High Court
Case No : WP (S) No. 5220 of 2013

Suman Kumar Sanam

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2014) 2 AJR 4 : (2013) 4 JLJR 703

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Manoj Tandan, N.K. Singh, Rashmi Kumari and S.S. Kumar, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. By the impugned order dated 14.08.2013 issued by the District Superintendent of Education cum Sub-Divisional Education Officer, Bokaro, the petitioner has been transferred from present place of posting i.e. Upgraded Middle School, Baidyamara, Circle Chas-3 to Middle School Chatrochatti, Circle-Gomia as Assistant Teacher.

2. Counsel for the petitioner assailed the impugned order on the ground that it is stigmatic and in the nature of punishment. He further submits that on the same day a departmental proceeding has been initiated vide office order as contained in Memo No. 1802 issued by the same respondent No. 2 for certain alleged misconduct. He submits that the charge sheet has also been issued vide Memo No. 1803 dated 14.08.2013 annexed to the said office order. In such circumstances, it is submitted that the impugned order is bad in law based upon allegations and the transfer is punitive in nature. Learned counsel for the petitioner has relied upon a Single Bench judgment of this Court in the case of Mithilesh Kumar Singh, Dhiraj Kumar Singh, Seema Kumari and Wakil Singh Vs. The State of Jharkhand The petitioner has also challenged the order of relieving dated 29.08.2013, Annexure-7, which has been allowed to be incorporated by

way of amendment application vide I.A. No. 7220 of 2013 vide order dated 03.10.2013.

3. Learned counsel for the State has sought to defend the impugned order. The submissions made on behalf of the respondent-State based upon the averments made in the counter affidavit once again seek to justify the impugned order on the same ground of alleged misconduct, for which the departmental proceeding has been initiated against him, vide Annexure-5. However, learned counsel for the respondents is not able to explain as to why the order of transfer is not punitive, if it is based upon the allegation on the face of it and also in the nature of stigma upon the petitioner before the departmental proceeding has actually culminated on the finding of guilt against the petitioner.

4. It is not in dispute that the respondent No. 2 has the jurisdiction to effect the order of transfer on such available grounds of administrative exigencies or for any other valid reason. However, the said order appears to have been passed on the basis of allegation made against the petitioner.

5. I have heard learned counsel for the parties and gone through the relevant materials on record including the impugned order of transfer. From perusal of impugned order, it is apparent that it has been passed with categorical allegations that the petitioner was found to be negligent and absent from duty as also failing to perform his responsibility as a teacher. It is also recorded that the allegations against the petitioner are prima facie established. Based upon such findings recorded in the impugned order, the order of transfer has been passed. For the same allegation, it appears that a departmental proceeding has also been initiated on the same day by the respondent No. 2, which is Annexure-5. The departmental proceeding apparently has not yet been concluded and the guilt of the petitioner for the said misconduct is yet to be established.

6. In such circumstances, the impugned order of transfer, which contains a prima facie finding of guilt of the petitioner on certain allegations is punitive in nature and attaches stigma. Therefore, in the light of the judgment rendered by Hon"ble Supreme Court in such cases as had also been noticed in the judgment relied upon by the petitioner in the case of Mithilesh Kumar Singh (supra), the impugned order being punitive in nature and casting stigma upon the petitioner before conclusion of the departmental proceeding itself, can not be sustained in law. The order being punitive in nature, even though the petitioner may have been relieved, the illegality in the order goes to the root of the matter and, therefore, it can always be interfered with in the writ jurisdiction of this Court in view of the decision held by this Court in the case of Uttam Kujur Vs. State of Jharkhand and Others, . Hence, the impugned order of transfer as well as order of relieving is, accordingly, quashed.

7. The petitioner has also made a claim for payment of salary for a period starting from June 2013. In such circumstances, the respondent No. 2 shall take a decision in the matter of release of the salary of the petitioner for the period

from June 2013 and subsequent thereto, as the impugned order or transfer has been quashed by this Court, within a period of 6 weeks from the date of receipt of a copy of this order. This writ petition is allowed in the aforesaid manner.