
(2015) 08 JH CK 0063

In the Jharkhand High Court

Case No : Writ Petition (S). No. 1538 of 2013

Surya Mani Acharya

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 4 JLJR 204

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Senior Advocate and Nehala Sharmin, for the Appellant; L.C.N. Shahdeo, G.P. IV and Pratiyush Lala, J.C to G.P. IV, Advocates for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J—Heard learned counsel for the parties.

2. Petitioner, an Officer of State Administrative Service appointed on 4.1.1996 pursuant to the recruitment exercise held under the 39th Bihar Public Service Commission Examination for the post of Deputy Collector, has been dismissed from service under Rule 49(7) of the Civil Services(Classification, Control and Appeal) Rules, 1965 vided resolution dated 4.7.2013 (Annexure-19) issued by the department of Personnel, Administrative Reforms and Rajbhasha. Petitioner has challenged the order of dismissal passed during the pendency of the writ petition where originally he had sought for quashing of the charge-sheet dated 4.8.2011 (Annexure-7), the enquiry report dated 31.12.2012 (Annexure-14). The second show cause notice dated 23.2.2013 (Annexure-15) is also challenged by the petitioner.

3. The facts as pleaded by the petitioner and canvassed on his behalf for the purpose of determination of the issues involved herein as as follows:--

"On a complaint made by one Sera Fenus Tirkey that petitioner has faked his

caste as "Lohra" Schedule Tribe Category, though he belongs to "Kumhar" Caste and has got appointment in the State Administrative Service, the Deputy Commissioner, Bokaro got the matter inquired through Deputy Collector, Land Revenue, Bermo at Tenughat. The report is at Annexure-2 dated 15.1.2007, which alleges that petitioner did not furnish any document in support of his caste. Petitioner was asked by the Deputy Commissioner, Bokaro through letter No. 388 dated 8.2.2007 to produce his caste certificate. Thereafter, an enquiry was conducted through Block Cooperative Extension Officer (B.C.E.O), Dhanbad who submitted his report to the Block Development Officer(B.D.O), Dhanbad vide Annexure-6 dated 10.2.2011. The B.C.E.O, Dhanbad enquired from persons living in the neighbourhood of the petitioner at Brindavan Darji Colony, Dhanbad. One Raghubansh Kr. Bharti and Ramesh Bharti reportedly told him that petitioner belongs to "Kumhar" caste. One Chotu Prasad Pandit alleged to be the father of the petitioner also stated that they belong to "Kumhar" caste. He also informed that he had been working as a Teacher at High School in Godda and superannuated in 1990. Another fact which was noticed by the B.C.E.O, Dhanbad was that one plot of land was registered in the year 1998 over which the house of the father of the petitioner is situated. The said plot was registered in the name of petitioner's mother namely Putul Devi and the father of petitioner is Harendra Prasad Pandit. The B.C.E.O, Dhanbad opined that the said registered deed may be enquired into for the purpose of ascertaining the caste. The report was forwarded to the Sub Divisional Officer, Dhanbad who submitted it before the Deputy Commissioner, Dhanbad. This formed the basis of the communication of the Deputy Commissioner, Dhanbad, Annexure-4 to the Department of Personnel, Administrative Reforms and Rajbhasa through letter dated 30.5.2011 for enquiring into the matter of the caste of the petitioner who claims himself to be belonging to Lohra Schedule Tribe community. Annexure-4 states that from the report of the Circle Officer, Dhanbad it was evident that petitioner's caste was "Kumhar" and the caste certificate No. 459 of 1994 obtained by him declaring him as "Lohra" caste of Schedule Tribe community was false. The charge-sheet at Annexure-5 dated 4.8.2011 was issued for initiation of departmental proceeding against the petitioner on the allegation that the Deputy Commissioner, Dhanbad in his enquiry report has found the caste of the petitioner as "Kumhar" while he had procured appointment claiming himself to be belonging to "Lohra" caste a Schedule Tribe under the 39th batch of Bihar Public Service Commission. This was in contravention of Rule 3(1)(i) of Jharkhand Government Servant Conduct Rules. The report of the Deputy Commissioner dated 30.5.2011 was formed part of the charge-sheet. One Mr. L. Khayante, IAS, Secretary, Welfare Department was appointed as Enquiry Officer to conduct the proceeding against the petitioner. Petitioner asked for several documents through his representation at annexure-8, letter dated 7.9.2011 before the Enquiry Officer, which inter-alia are as follows:-- (i) report of the Circle Officer, Dhanbad relating to the enquiry; (ii) enquiry report of S.D.O, Dhanbad (iii) photo copy of the original record of certificate No. 459 dated 9.5.1994; (iv) the enquiry report related to issuance of certificate No. 459 dated

9.5.1994; (v) the proceeding conducted by the S.D.O related to issuance of caste certificate No. 400/94; (vi) the relevant extracts of the register and report of B.D.O, Dhanbad relating to issuance of caste certificate; (vii) relevant extract of the enquiry report of the S.D.O, Dhanbad which has been countersigned by the Deputy Commissioner, Dhanbad vide letter No. 61 dated 20.6.1994, (viii) relevant extract of the document declaring him belonging to Kumhar caste, which has been relied upon by the Deputy Commissioner vide his letter dated 30.5.2011 and (ix) all other related documents which show that petitioner had wrongfully obtained the certificate of Lohra in the year 1994. The Enquiry Officer thought it proper to direct the Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasa vide Annexure-8 dated 22.11.2011 to provide the relevant document to the petitioner as early as possible as the next date of enquiry was 12.12.2011. The said Enquiry Officer was changed in the meantime and one Ashok Kumar Sinha, retired IAS, was appointed vide Annexure-9 dated 13.12.2011. The documents sought for by the petitioner were not provided to him. Petitioner however made a request to the S.D.O, Dhanbad who provided the papers relating to the caste certificate No. 459 dated 9.5.1994 issued by the B.D.O, Dhanbad and also the caste certificate No. 400/94 issued by the S.D.O, Dhanbad and extract of the register in the Office of the Deputy Commissioner, Dhanbad where at serial No. 61 against the name of the petitioner, "Lohra" caste is shown. The report of the S.D.O, Dhanbad having countersign of other Officers including the Deputy Commissioner, Dhanbad is also shown. The caste certificate 400/94 also shows counter signature of the Deputy Commissioner, Dhanbad."

4. It is stated that petitioner on his own also produced the Office memo of 1981 issued by the Office of District Inspectress of Santhal Pargana regarding appointment of his father as Assistant Teacher in High School Amrapara as a candidate belonging to Lohra Caste, Schedule Tribe. He also produced the death certificate, Annexure-12/1 dated 30.9.1998 issued by the Registering Authority, Government of Bihar showing the date of death of his father as 19.9.1998. He also produced the certificate of his birth issued on 15.8.1968 (Annexure-12/2) where again the caste of the mother of the petitioner was shown as "Lohra". The inquiry proceeded but no witnesses were examined before the Inquiry Officer on the part of the prosecution. The opinion of the Deputy Commissioner, Dhanbad produced by the presenting officer before the Inquiry Officer is at Annexure-H to the counter affidavit. Apart from that it is stated that the Presenting Officer made his submission in support of his own written statement which ultimately formed the basis of the inquiry report finding the charge against the petitioner established.

5. The impugned punishment order has been challenged by the petitioner on the ground that it is a case of no evidence as no witness were examined by the prosecution to establish the charge. The B.C.E.O, B.D.O, C.O, Dhanbad and L.R.D.C., Bermo at Tenughat and three persons referred to in the report of the B.E.C.O and the registered deed also referred to in the said report were also not

produced. Petitioner was in fact denied the documents which he sought for in order to prepare his defence. The Enquiry Officer who directed the respondent-department to supply the documents to the petitioner was changed in an arbitrary and malafide manner by a Retired IAS Officer. The relevant materials produced by the petitioner on his behalf before the Enquiry Officer were also not considered. The Enquiry Officer instead placed the burden of proof upon the petitioner to establish that he belongs to "Lohra" community where as it was for the prosecution to establish the charge that petitioner did not belong to "Lohra" Schedule Tribe. The enquiry report is based upon conjectures without any material evidence or witnesses examined during the course of the proceeding. Official documents of caste prepared in the year 1994 has been disbelieved on mere ipse dixit of the Enquiry Officer. The lawful course in such circumstances was to refer the matter before the caste scrutiny committee constituted by the State Government pursuant to the directions passed by the Hon"ble Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, AIR 1995 SC 94 : (1994) 5 JT 488 : (1994) 3 SCALE 935 : (1994) 6 SCC 241 : (1994) 3 SCR 50 Supp , instead in a summary manner petitioner has been found guilty and imposed with a harsh punishment of dismissal from service. Judgment in support thereof in the case of S. Loganathan Vs. Union of India (UOI) and Others, (2012) 1 CTC 672 : (2011) 13 SCALE 7 : (2012) 1 SCC 293 : (2012) 1 SLJ 186 has also been relied.

6. It is submitted on behalf of learned senior counsel for the petitioner that the entire proceeding is vitiated due to non observance of Principles of Natural Justice as no evidence was produced before the Enquiry Officer leading to the conclusion of the guilt against the petitioner.

7. Learned G.P-IV has vehemently opposed the submission made on behalf of the petitioner and has relied upon the contents of the counter affidavit to support the impugned order. He has referred to the complaint made by one Sera Fenus Turkey which was enquired into by the Deputy Commissioner, Bokaro through the Circle Officer, Bermo at Tenughat which formed the basis of the letter recommending initiation of departmental enquiry against the petitioner dated 30.5.2011 (Annexure-A). He also has referred to the repeated letters issued upon the petitioner to produce his caste certificate during the course of such preliminary enquiry which the petitioner used to avoid. Reference has also been made to the letters of the mother of the petitioner at Annexure-H series for mutation of certain piece of land enclosing the affidavit before the Notary Public dated 28.5.2008 where it is stated that the petitioner were two brothers. It is submitted that the report of the Circle Officer in the mutation matter is also enclosed to the counter affidavit. It is stated that contrary to what the petitioner has professed that he is a sole child of his parent, the mother of the petitioner has clearly stated that there were two sons, one being the petitioner and the other being Chandra Prakash, who is also in service. The report of the Circle Officer during the course of mutation enclosed to the counter affidavit shows that the plot of land does not belong to the Schedule Tribe Category. Learned counsel

for the respondent- State has referred to the written opinion of the Deputy Commissioner, which were submitted before the Enquiry Officer through the Presenting Officer and is enclosed as Annexure-1 to the Counter Affidavit. It is submitted that petitioner deliberately avoided appearing during the course of preliminary enquiry where the veracity of his caste was being enquired into. The documents which have been produced by the petitioner relating to appointment of his father or his own birth certificate have been enquired into but they could not be ascertained on account of no record being available, such as in the concerned office of Food Cooperation of India where the petitioner's father was said to have served. It is submitted that petitioner did not respond to the second show cause notice issued upon him after submission of the enquiry report and has straightway challenged the order of termination without offering any reply to the charges which were found to be established during the course of enquiry. Learned G.P.IV has further submitted that the enquiry report has taken into account the defence of the petitioner and also all materials relied upon by the Deputy Commissioner through his written statement submitted before him. It is submitted that petitioner was found to have obtained certificate of caste of "Lohra" Schedule Tribe community, though he belongs to the caste of "Kumhar" as has been found by the Enquiry Officer on the basis of the materials produced before him. If the petitioner has procured appointment on the basis of a certificate of a particular caste to which he does not belong, the findings in the enquiry and the punishment imposed upon him is wholly proper and justified in the eye of law. It is also proportionate to the misconduct established, which requires no interference.

8. I have heard learned counsel for the parties at some length and have gone through the relevant materials on record. The relevant factual matrix pleaded by the parties have been indicated in sufficient detail in the preceding paragraphs of the judgment. In a writ proceeding under Article 226 of the Constitution of India under exercise of power of Judicial review, it is to be seen whether the departmental proceedings were conducted in a proper manner by observing the Principles of Natural Justice with adequate opportunity to the petitioner to defend himself or not. It is also required to be seen whether the findings of the Enquiry Officer are based upon material evidences or not. It is also to be seen whether the charge of having procured employment by resorting to a false certificate of caste of Lohra Schedule Tribe community by the petitioner is established on the basis of the material adduced in the enquiry or not.

9. This Court is conscious that sufficiency and adequacy of materials evidence in a departmental proceeding is not required to be gone into if the materials produced during the course of the enquiry do establish the charge of misconduct alleged against the delinquent employee.

10. In this regard the proposition of law is laid down by the Hon"ble Supreme Court in the judgment rendered in the case of Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, AIR 2001 SC 24 : (2000) 87 FLR 877 :

(2000) 2 JT 206 Supp : (2001) 1 LLJ 583 : (2000) 7 SCALE 19 : (2001) 1 SCC 182 : (2001) SCC(L&S) 189 : (2001) 2 UJ 1185 : (2000) AIRSCW 3826 : (2000) 7 Supreme 112 , the relevant para 19 thereof is quoted herein below:--

"19. While it is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot be doubted. Judicial review of administrative action is feasible and the same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above, however, do find some support from the decision of this Court in the case of Apparel Export Promotion Council v. A.K. Chopra."

11. It is appropriate also to quote the opinion rendered by the Hon"ble Supreme Court in the case of State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, AIR 2011 SC 1931 : (2011) 129 FLR 937 : (2011) 4 JT 14 : (2011) 3 LLJ 13 : (2011) LLR 634 : (2011) 4 SCALE 56 : (2011) 4 SCC 584 : (2011) 1 SCC(L&S) 721 : (2011) 3 SCR 589 : (2011) AIRSCW 2583 , the relevant para 7 thereof is quoted herein below:--

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India, Union of India v. G. Ganayutham, Bank of India v. Degala Suryanarayana and High Court of Judicature at Bombay v. Shashikant S. Patil."

12. While being tested on this parameter, it is found that that the prosecution did not venture to examine any witnesses during the course of enquiry in order to establish the charge against the petitioner. The preliminary enquiry was conducted behind his back by the B.C.E.O, Dhanbad who submitted his report to the B.D.O, Dhanbad and thereafter in turn to the S.D.O, Dhanbad which formed

the basis of the recommendation of the Deputy Commissioner, Dhanbad for initiation of the departmental proceeding against the petitioner to the department of Personnel, Administrative Reforms and Rajbhasha. Neither the B.C.E.O or the three persons allegedly examined by him namely, Raghubans Kumar Bharti, Ramesh Kumar Bharti and one Chotu Pandit, who was alleged to be the father of the petitioner were examined. The B.D.O and the L.R.D.C were also not examined during the course of the enquiry. The report of the Deputy Commissioner bearing No. 1608 dated 30.5.2011 was the only document enclosed to the charge-sheet, Annexure-4. If the preliminary enquiry was conducted in the matter behind the back of the petitioner, it was incumbent upon the Presenting Officer to examine the persons, whose statement formed the basis of preliminary report so that petitioner could have got opportunity to cross examine them to test the veracity of their statement and content of the report. This was not done. The relevant documents which the petitioner sought and were directed to be served by the Enquiry Officer, Mr. L. Khayante was also not served upon the petitioner except the certificate of caste issued by the Circle Officer, Dhanbad and Sub Divisional Officer, Dhanbad as also the extracts of the register which formed the basis of the proceeding leading to the issuance of those two certificate maintained in the relevant offices. Petitioner has relied upon those documents but the Presenting Officer or the prosecution did not examine any witness to dislodge the documents of caste and the endorsement made on the top of the caste certificate that enquiry had been done by the Panchayat Sevak and Block Agriculture Officer. The certificate of caste Lohra issued by the S.D.O, Dhanbad bearing No. 400 of 1994 is also shown to be countersigned by the Deputy Commissioner, Dhanbad on 20.6.1994. This document appears to have been completely overlooked by the Enquiry Officer. The registered deed which is said to be referring to the caste of the parents of the petitioner were also not produced before the Enquiry Officer. The only material which were produced before the Enquiry Officer by the prosecution were the report/opinion of the Deputy Commissioner, Dhanbad which was again based upon the preliminary report prepared during the enquiry against the petitioner.

13. Ideally speaking, when the question relating to the status of the caste of the petitioner was raised, the matter should have been referred to the Caste Scrutiny Committee duly notified by Government of Jharkhand where such issues are enquired into in a structured manner by conducting enquiry at various levels. Instead the entire departmental proceeding was conducted without any material witness or document produced before the Enquiry Officer, who in his wisdom found the charges established against the petitioner only upon the report of the Deputy Commissioner and the written statement submitting by the Presenting Officer. In essence it can be said that the findings in enquiry were based upon no evidence in the eye of law. If the enquiry report is based upon no evidence as such in the eye of law, it stands vitiated. The documents which are relied upon by the respondents through their counter affidavit are either related to the preliminary enquiry conducted behind the back of the petitioner or certain

documents relating to mutation etc., which were never part of the enquiry proceeding. As a matter of fact, the complainant Sera Fenus Tirkey never appeared to support the allegation during the course of physical enquiry and may have been an anonymous person. If such serious charge of obtaining employment by relying upon certificate of a caste "Lohra" i.e. Scheduled Tribe to which the petitioner did not belong was required to be enquired into, the enquiry ought to have been proceeded with all seriousness by observing the Principles of Natural Justice and also producing all relevant materials to substantiate the charge. If the proceedings have not been conducted in that manner, it would definitely prejudice the case of the petitioner who has been punished without proper departmental enquiry. The plea of the respondents about the non receipt of second show cause notice by the petitioner would not improve the serious deficiencies found during the course of the departmental proceeding in which the alleged charges were found to be established by the Enquiry Officer.

14. In such circumstances, not only the proceedings are vitiated but the consequential order of punishment based upon that is unsustainable in the eye of law as well as on facts. In view of the reasons discussed herein above, the impugned order of dismissal dated 4.7.2013 (Annexure-19) of the petitioner is accordingly quashed. Accordingly, petitioner shall be reinstated in service with consequential benefits. However, it is left open for the respondents to proceed afresh in the matter in accordance with law after giving due opportunity to the petitioner.

15. The writ petition is allowed. Pending I.A. also stands closed.