

(2019) 06 JH CK 0011

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6110 Of 2017

Toshleshwar Pandey

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 06 JH CK 0011

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Manoj Kumar Sinha, Shailendra Kumar Sinha, Atanu Banerjee, D.C. Mishra

Final Decision : Disposed Off

Judgement

1. This writ petition is filed under Article 226 of the Constitution of India whereby and whereunder the petitioner has prayed to issue appropriate

direction upon the concerned authority for making payment of dues amount on the basis of the work performed which has been corroborated by its measurement.

2. It is the case of the petitioner that while he was working as Panchayat Sevak in Chandwara Block, he has assigned to execute two works under the

scheme No.01/2007-08 and 02/2007-08. The scheme No.1, after execution of work, measurement of the execution to the extent of Rs.15,18,583.00/-

has been made and while executing the work under Scheme No.02/07-08 the measurement of the work for measurement to the extent of

Rs.15,93,466.00/- has been made but the entire amount has not been paid i.e. for Scheme No.01 which is about 18,583/-, while for scheme No.2, is

about 43,466/-, therefore, the instant writ petition has been filed.

3. Counter affidavit has been filed by the State-respondent placing the same by Mr. Atanu Banerjee, learned Sr. S.C.-III, has submitted that the work

in question has been executed beyond the fixed time, therefore, the amount is not admitted and the position of law is very clear that in case of disputed

money claim, the remedy lies to be aggrieved before the competent court for its adjudication.

His further submission is that for irregularity a departmental proceeding has been initiated in which the charge leveled against him has been found to

be proved, upon which, the order of punishment of censure has been passed.

Upon which, learned counsel appearing for the petitioner has submitted that what has been contended and stated in the counter affidavit is contrary to

the enquiry report submitted by the District Panchayati Raj Officer, Koderma as has been annexed as Annexure-4. His submission is that it would be

evident from Page-48 thereof that the enquiry officer has not found any misappropriation of public money and whatever delay has been caused i.e.

due to transfer from Chandwara to Koderma Block, therefore, amount which is lying before the authority cannot be withheld, therefore, appropriate

direction may be passed.

4. Having heard the learned counsel for the parties and on appreciation of their rival submissions it is not in dispute that the petitioner while working as

Panchat Sevak in the Chandwara Block, has been assigned two works to execute i.e. for construction of building of Panchayat in Mahugaw village

and another is the construction of Panchayat building for Tham Gram panchayat, both the schemes have been marked as Scheme Nos.01/07-07 and

02/07-08 which were to be executed under the said scheme. The petitioner has executed the work and thereafter, measurement has also been made

but the amount in entirety has not been disbursed in his favour.

A departmental proceeding has been initiated for which the enquiry officer has been appointed, who has concluded the enquiry and submitted report

before the Deputy Commissioner which has been annexed as Annexure-4 to the writ petition wherefrom it is evident that the scheme No.01/07-08 the

petitioner after execution of the work and on its measurement it has been found that the work to the tune of Rs.15,18,583.00/-has been executed.

Likewise for scheme No.02/07-08 the work to the extent of Rs.15,93,466.00/-has been measured.

5. It is the case of the petitioner that the dispute regarding disbursement of money pertaining to Scheme No.01/2007-08 Rs.15,18,538.00/- have been

made out while for scheme No.02/2007-08 against the total work for amount and measured of an extent of Rs.15,93,466.00/- the sum of Rs.15 lakhs

have been disbursed in favour of the petitioner, as per the scheme No.01/2007-08 and Rs.15,50,000.00/- for the Scheme No. 02/2007-08, therefore,

the work for scheme No.1 and sum of Rs.18,583.00/- and for scheme No.02 sum of Rs.43,466.00/-have not been disbursed.

6. The State-respondent has disputed the same by taking the stand in the counter affidavit that the work has been executed after delay i.e. after the expiry of the stipulated time.

7. It is not in dispute that in a case the disputed claim, the writ court sitting under Article 226 of the Constitution of India is not supposed to pass any

mandamus by issuing a direction upon the State authority to disburse the amount but certainly if the amount would be found to be admitted the writ

court has got jurisdiction to exercise the extraordinary power conferred thereunder.

8. This Court considering the aforesaid legal position of law and on appreciation of the enquiry report as has been annexed as Annexure-4 wherefrom

it is evident that the enquiry officer has come with the conclusive finding that there is no misappropriation of public money however there is some

delay but the delay stipulated therein i.e. the transfer of petitioner from Chandwara to Koderma block, therefore, the ground which has been agitated

by the State-respondent in counter affidavit more particularly at paragraph-14 and 16 wherein it has been stated that the work was not completed in

time for which petitioner has been held liable but, the said statement is contrary to the enquiry report as has been annexed as Annexure-7.

Further the Annexure-7 has been annexed in order to support the statement made at Paragraph-9 to the writ petition it has been replied by the State-

respondent at Paragraph-10 and as would be evident from the said paragraph that the statement made at paragraph-9 has not been disputed,

therefore, this Court is of the view that when the enquiry officer has come to the conclusive finding with respect to no misappropriation of public

money and the reason for delay has been reflected therein i.e. the transfer of the petitioner from one place to another hence, the grievances pertaining

to disbursement of the money needs consideration.

9. In view thereof, the writ petition stands disposed of, directing The Principal Secretary, Rural Development Department, Government of Jharkhand

is directed to take decision considering the enquiry report dated 18.11.2013 as has been annexed as Annexure-7 by passing a speaking order within a

period of three weeks from the date of receipt of copy of the order.

10. Needless to say that if the concerned respondent thinks to hear the other authorities who are related with the scheme, he is at liberty to hear

before taking final decision.