
(2012) 12 JH CK 0087
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5218 of 2005

Tulsi Das

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2013) 1 JLJR 281

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : V. Shivnath and Abhijeet Kr. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.

I.A. No. 2435 of 2006 & I.A. No. 2436 of 2006

1. Heard counsel for the parties. By this writ petition, petitioner seeks for quashing the entire departmental proceeding vide Memo No. 3458 dated 18.11.2002 (Annexure-2) and the subsequent order of punishment contained in Memo No. 2536 dated 9.9.2004 (Annexure-1).

2. According to the petitioner, he was appointed in the Bihar Education Service (Inspection Branch) Class-II in the year 1990 and was posted as Area Education Officer, Barahat in the district of Banka. The petitioner was thereafter transferred to different places and after being posted at Garhwa, he was surprised to receive the impugned memo by which a departmental proceeding was initiated against him in respect of alleged charges, which related to his place of posting, which falls within the territory of successor State of Bihar and also to the period prior to 15.11.2000. It is submitted on behalf of the petitioner that the impugned order has, thereafter, been passed on 9.9.2004 without any inquiry or second show cause to the petitioner whereby punishments have been inflicted such as withholding of two annual increments with cumulative effect and the recovery of

Rs. 96,161/-, which is illegally paid to another employee namely Harihar Prasad Singh, on fictitious signature, at his place of posting at Banka. Further punishment has been inflicted that he should not be considered for administrative post in the matter of his posting in future. Counsel for the petitioner also submits that he had also made representation vide Annexure-8 that on detection of the forged appointment of Harihar Prasad Singh by the District Education Officer, Bhagalpur in the year 1997, an FIR was registered against the Block Education Extension Officer and Office Assistant and the payment of salary of the said persons were stopped, against whom also an FIR was registered and steps for recovery of the said amount was also undertaken. Counsel for the petitioner has assailed the impugned order of punishment on the ground that neither enquiry report was furnished to him nor second show cause notice was handed over to him before inflicting the said punishment. He has further assailed the impugned order on the ground that order is contrary to Rule 49 of Civil Services (Classification and Appeal) and also without the consent of State of Bihar as the period of the alleged misconduct related prior to 15.11.2000 within the territory of successor State of Bihar. It is further submitted that the impugned orders suffers from complete non-application of mind as the disciplinary authority has not disclosed any reason for passing the same.

3. The respondents have appeared and filed their counter affidavit, however, the specific submission made in para-7 that neither enquiry report has been served upon the petitioner nor any show cause notice was given to him, have not been specifically denied by them. Although the enquiry report is annexed as Annexure-A but the respondents, despite filing supplementary counter affidavit, have failed to bring on record any copy of second show cause notice served upon the petitioner before passing of the impugned order.

4. From the facts narrated hereinabove, it is, therefore, apparent that respondents while imposing the major punishment upon the petitioner for alleged misconduct relating to the period prior to the bifurcation of the parent State of Bihar for a territory now falling within the successor State of Bihar, have proceeded against the petitioner now posted at Garhwa and on the basis of a departmental proceeding initiated in the year 2002. The petitioner has been inflicted with major punishment of withholding of two annual increments with cumulative effect. Apart from that punishment of recovery of the said amount in question has been ordered. In the absence of the enquiry report and second show cause, the petitioner has been prejudiced from defending himself before infliction of the aforesaid punishment, which is not in consonance with Article 311 of the Constitution of India as well as the departmental Rules in that respect. It further appears from the enquiry report annexed to the counter affidavit that although the enquiry officer had found charges true, but had recommended for the punishment of only withholding of the rest of the salary for the suspension period, while the disciplinary authority has proceeded to inflict major punishment.

5. In these circumstances, the impugned order suffers from complete violation of

principle of natural justice as also the settled law in respect of conduct of the departmental proceedings as to requirement of furnishing of the enquiry report alongwith the second show cause before passing of the order of punishment.

6. In the wake of the aforesaid facts and circumstances, the impugned order cannot be sustained in law and it is, accordingly, set aside and the writ petition stands allowed. I.A. No. 2435 of 2006 and I.A. No. 2436 of 2006 stand disposed of.