
(2016) 02 JH CK 0071
In the Jharkhand High Court
Case No : W.P. (S) No. 4947 of 2015

Uday Narayan Mishra

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Bihar Consumer Protection Rules, 1987 — Section 3(5)(e)
Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 10

Citation : (2016) 4 AIRJharR 455 : (2016) 3 JBCJ 303 : (2016) 2 JLJR 117

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Manoj Tandon & Navin Kr. Singh, Advocates, for the Appellant;
J.C. to G.P.-III, for the Respondent

Final Decision : Allowed

Judgement

Pramath Patnaik, J.—In the instant writ application, the petitioner has inter alia prayed for quashing/setting aside the order dated 21.09.2015 pertaining removal from the post of President, District Consumer Forum, Palamau and for quashing the advertisement dated 21.09.2015 relating to appointment on the post of President, District Consumer Forum, Palamau and for direction to the respondents to reinstate the petitioner with full back wages.

2. The factual matrix, as delineated in the writ application, in nutshell, is that the petitioner retired as a member of superior Judicial Service of the State of Jharkhand while holding the post of President, Labour Court, Bokaro. In pursuance to advertisement issued for the post of President, District Consumer Forum, Palamau, he was selected and appointed on the said post vide notification dated 24.07.2012. Pursuant to the said notification dated 24.07.2012, the petitioner joined as President of District Consumer Forum, Palamau on 31.07.2012 and took the charge of the said post. The service condition of the post of President of District Consume Forum is governed by the provisions

enshrined in Consumer Protection Act, 1986 read with Rule Bihar Consumer Protection Rules, 1987, which has been framed in exercise of power conferred by sub Section (2) of Section 30 of the Consumer Protection Act, 1986. The said Rule has been adopted by the State of Jharkhand.

3. Before advertng to the factual aspects, it would be apposite to refer to Sub-rule (5) of Rule 3 of the Rule 1987, which reads as under:

"3.(5) In addition to provisions of Section 10 (2), State Government may remove from the office, the President and member of a District Forum who-

(a) has been adjudged as insolvent, or

(b) has been convicted of an offence which in the opinion of the State Government involves moral turpitude, or

(c) has become physically or mentally incapable of action as such member, or

(d) has acquired such financial or other interest as is likely to affect prejudicial his functions as a member, or

(e) has so abused his position as a render his continuance in office prejudicial to the public interest:

Provided that the President or member shall not be removed from his office on the ground specified in clauses (d) and (e) of the sub-rule (5) except on an enquiry held by State Government in accordance with such procedures as it may specify in this behalf and finds the member guilty of such ground."

4. It is alleged in the writ application that due to some conspiracy being hatched by some persons, a show cause notice was issued to the petitioner vide letter dated 31.07.2015 by respondent no.2. After receipt of the show cause notice, the petitioner submitted his reply inter alia stating therein for supplying of the copy of the complaints and the petitioner denied the allegations made against him in the show cause reply. To the utter surprise and consternation, the petitioner has been removed from the post of President, District Consumer Forum, Palamau by order dated 21.09.2015 which is impugned in this writ application. After removal of the petitioner from the said post an advertisement has been published on 21.09.2015 for the post of President, District Consumer Forum, Palamau.

Being aggrieved by the impugned order of removal from service, the petitioner having no alternative and efficacious remedy, approached before this Court under Article 226 of the Constitution of India invoking extraordinary jurisdiction for redressal of his grievance.

5. Heard learned counsel for the parties.

6. Mr. Manoj Tandon, learned counsel appearing for the petitioner submitted with vehemence that in the instant case Rule 3(5) (e) pertaining to inquiry by the State Government has not been followed. On conjoint reading of the aforesaid

provisions, there is no scope for any ambiguity or doubt or debate that inquiry must precede before taking any action for removal from service. Learned counsel for the petitioner submits that holding of inquiry and finding of guilt is a sine qua non before visiting with any evil or civil consequences. In the instant case, apart from a bald show cause notice, no inquiry worth the same has been conducted by the State Government to ascertain the veracity of the allegations. Therefore, there has been non-compliance of the aforesaid provisions, which have rendered the impugned order of removal unsustainable in the eye of law. Learned counsel for the petitioner further submits that the petitioner has been appointed as President, District Consumer Forum, Palamau by the order of the Governor but the impugned order of termination has not been passed by the authority competent under the aforesaid provisions. In this regard, learned counsel for the petitioner has referred to the decision reported in (1987) 3 SCC 34 (State of Bihar and Ors. v. Kripalu Shankar and Ors). (paragraphs 14 and 15). Learned counsel for the petitioner has strenuously urged that order of removal as evident from Annexure-7 to the writ application that the impugned order has been passed by the Secretary of the State Government, but the same has not been authenticated by the Governor. Learned counsel for the petitioner further submits that case of the petitioner is squarely covered by the decision of this Court passed in W.P.(S) No.5659 and 5730 of 2011 rendered in case of Meena Kumari & Anr. v. State of Jharkhand & Ors. reported in 2012 (1) JLR 70.

7. On query made by this Court, as to whether there are any vacancies of the President in the Consumer Forum, learned counsel for the petitioner on instruction submits, as to his reliable information there are about eight vacancies, which have been filled up on officiating basis.

8. A counter affidavit has been filed by the respondent nos.1 and 2 controverting the averments made in the writ application. In the counter affidavit, it has been inter alia submitted that Committee constituted by the State Government after going through the show cause reply filed by the petitioner, removed him from the service as per the Jharkhand Rule of Executive Business. It has further been submitted in the counter affidavit that the petitioner has been removed from service after giving proper show cause notice and after going through the reply filed by the petitioner, the empowered Committee headed by the Chairman, Jharkhand State Consumer Redressal Commission, Ranchi recommended for removal of the petitioner and accordingly, as per procedure he has been removed from the said post. In this respect, show cause notice dated 31.07.2015 has been annexed as Annexure-A to the counter affidavit.

9. Learned J.C. to G.P.III has strenuously urged that removal from service is in accordance with law, and there is absolutely no infirmity or illegality in the impugned order, as several allegations have been levelled against the petitioner for the omissions and commissions committed by him. Therefore, taking into consideration the allegations, the impugned order of punishment has been passed vide impugned order dated 21.09.2015 which is legal and justified.

10. Having heard learned counsel for the respective parties at length and on perusal of the writ application, counter affidavit and other relevant records, I am of the considered view that the petitioner has been able to make out a case for interference on the following grounds:

(I) Admittedly, in the instant case, as disclosed from the counter affidavit, the petitioner has been removed from services on the recommendation of the State Consumer Redressal Commission, Ranchi who has no power either in the Act or Rules to conduct any inquiry against the President, District Consumer Forum and the recommendation made by the Jharkhand State Consumer Redressal Commission, is wholly without jurisdiction. So far as Rules 3(5) (e) is concerned, it says that the Member or President, if abuses his position, prejudicial to the public interest then after due inquiry the continuance of the President or Member can be cancelled but the inquiry must precede before taking any action for removal from service, therefore, the impugned order (under Annexure-7) dated 21.09.2015 is without jurisdiction and is in the teeth of Rule 3(5) (e) of the Bihar Consumer Protection Rules, 1987. Therefore, the impugned order being non est in the eye of law, is liable to be set aside. Moreover, the submission of the learned counsel for the petitioner that his case is squarely covered by the aforesaid decision, I find much force in his contention and his case is squarely covered by the aforesaid decision.

(II) The second contention raised by the learned counsel for the petitioner that the order passed by the State Government not being authenticated by the Governor of the State, is liable to judicial scrutiny as has been held by the Hon? ble Apex Court in case of State of Bihar and Ors. v. Kripalu Shankar and Ors. (supra).

11. In view of the reasons stated in the foregoing paragraphs, the impugned order of removal from services dated 21.09.2015 vide Annexure-7, is quashed and the respondents are directed to reinstate the petitioner forthwith in the available vacancies of post of President, District Consumer Forum with all consequential benefits. However, if necessary, it is open to the department to make a de novo inquiry, in accordance with law, after affording opportunity to the petitioner.

12. Accordingly, the writ petition stands allowed.