

Arvind Kumar Vs. Education

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Court : Jharkhand

Decided On : Mar-02-2017

Appellant : Arvind Kumar

Respondent : Education

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 2694 of 2016
Arvind Kumar son of late Baijnath Singh, Resident of Flat No.501, Maa Laxmi Plaza, Basant Vihar, P.O. Harmu, P.S. Argora, District-Ranchi Petitioner
Versus 1. State of Jharkhand.

2. Secretary, School Education and Literacy Department, Govt. of Jharkhand having its office at MDI Building, P.O. Dhurwa, P.S. Jagarnathpur, District- Ranchi.

3. Joint Secretary, School Education and Literacy Department, Govt. of Jharkhand having its office at MDI Building, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi.

4. Deputy Secretary, School Education and Literacy Department, Govt. of Jharkhand having its office at MDI Building, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi.

5. Director, Secondary Education, School Education and Literacy Department, Govt. of Jharkhand having its office at MDI Building, P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi.

6. Deputy Commissioner, Jamtara, P.O. & P.S. Jamtara, District-Jamtara. Respondents --- CORAM : HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For the Petitioners : M/s Bhanu Kumar & Bharti Kumari, Advocates For the Respondents-State : Mr. R. Sahay, J.C to S.C (Mines) ----- CAV on 14/09/2016 Pronounced on 02/03/2017 Per Pramath Patnaik, J.

In the instant writ application, the petitioner has sought for quashing the order of retrospective suspension as contained in memo No.336 dated 22.12.2015 (Annexure-4) issued under the signature of Deputy Secretary, School Education and Literacy Department, Govt. of Jharkhand on the ground of sanction of prosecution against the petitioner in a case under Section 19 (1) B and 7/13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988 and the petitioner has sought for writ of mandamus commanding upon the respondent no.2 for suitable post as per seniority. The Petitioner has further prayed for quashing the impugned resolution dated 13.06.2016 (Annexure-5) by which a decision has been taken to initiate the departmental proceeding under Rule 17 and 14 of the Jharkhand Government Servant (Classification, Control and Appeal) Rules, 2016 upon the charges framed in Prapatra K as contained in letter no.89 dated 17.02.2016 of the Deputy Commissioner, Jamtara for various irregularities committed by the petitioner as District Education Officer, Jamtara and for quashing the charges under Prapatra K against the petitioner vide letter dated 17.02.2016 (Annexure-7) by Deputy Commissioner, Jamtara to the Deputy Secretary, School Education and Literacy Department, Jharkhand, Ranchi.

2. The brief facts as averred in the writ application, is that the petitioner being a member of the State Education Service, Class-I and while he was posted as District Education Officer, Jamtara and was holding the additional charge of Regional Deputy Director of Education (RDDE), Dumka Division, Dumka. The petitioner was falsely implicated in Vigilance P.S. Case No.38/2015 under section 7/13 (2) of the Prevention of Corruption Act, 1988 and consequent upon a raid, the petitioner was taken into custody. The petitioner was placed under deemed suspension under Rule 99 of the Service Code with effect from 17.07.2012. After being enlarged on bail, the petitioner submitted joining on 23.11.2015 before the Director, Secondary Education. But to the utter surprise vide notification contained

in Memo No.336 dated 22.12.2015 issued by the Deputy Secretary, School Education and Literacy Department, Government of Jharkhand once again placed the petitioner under suspension under Rule 100 of the Service Code with retrospective effect with effect from 22.11.2015 on the ground of sanction of prosecution. Thereafter, vide departmental resolution a departmental proceeding was initiated against the petitioner under Rule 17 and 14 of the Jharkhand Government Servant 3 (Classification, Control and Appeal) Rules, 2016 as contained in memo dated 13.06.2016 has been issued vide Annexure-5 to the writ petition. It has been averred in the writ application that the petitioner sought information under R.T.I. Act relating to similarly situated officers of the School Education and Literacy Department who have been implicated in vigilance case under provisions of Prevention and Corruption Act and the information as sought for by the petitioner has been provided by the Assistant Director Cum Public Information Officer, Primary Education as evident from Annexure-6 to the writ application. Alongwith Departmental resolution dated 13.06.2016 charges drawn in Prapatra K was supplied to the petitioner which has been drawn by the Deputy Commissioner, Jamtara on 17.02.2016 i.e. four months prior to initiation of departmental proceeding as per Annexure-7 to the writ application. In the vigilance case, the charge sheet has already been filed against the petitioner by way of submission of final form before the Special Judge Vigilance on 10.09.2015 and therefore there is no occasion for the petitioner to tamper with any of the records or exercise undue influence over the witnesses of the case. Thereafter, the petitioner has submitted series of representations before the respondent authorities for revocation of suspension vide Annexure-13 to the writ application. Due to inaction of the respondent, the petitioner has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Learned counsel for the petitioner has submitted with vehemence that the impugned order of suspension dated 22.12.2015 with retrospective effect i.e. 22.11.2015 is impermissible in the eyes of law. Learned counsel for the petitioner further submits that the impugned order of suspension which continued for about five months without initiation of any formal departmental proceeding is wholly illegal against the ratio laid down by the Hon'ble Apex Court. Learned counsel for

the petitioner further submits that the impugned order of suspension dated 22.12.2015 is a glaring instance of arbitrary, discriminatory and malafide approach of the respondent authorities, because in similar matters where officials of Education Department were implicated in trap cases after revocation of deemed suspension after being enlarged on bail by the Hon'ble Court. Learned counsel further submits that the continuation of the impugned order of suspension even after submission of the charge sheet before the learned Special Judge Vigilance is wholly against the decision of the Hon'ble Supreme Court. Learned counsel further submits that issuance of charges in Prapatra K forwarded to the Deputy Commissioner, Jamtara on 17.02.2016 i.e. about four months prior to initiation of formal departmental proceeding is wholly nonest in the eyes of law. Learned counsel for the petitioner has referred to decision reported in AIR 1993 SC1488 Paragraph no. 9, (2013) 5 SCC111 Paragraphs no.17 and 18, (1980) 3 SCC734 Page 735, 736, 737. Learned counsel for the petitioner, during course of hearing, has referred to Government of Jharkhand Notification dated 3rd February, 2016 pertaining to Jharkhand Government Servants (Classification, Control & Appeal) Rules, 2016.

4. Controverting the assertion made in the writ petition, a counter- affidavit has been filed on behalf of the respondent nos.1 to 4. It has been stated in the counter-affidavit that the Superintendent of Police, Anti Corruption Bureau, Ranchi reported vide letter dated 13.05.2016 vide Annexure-A to the counter-affidavit that in view of the vigilance P.S. Case No.38/2015 dated 15.07.2015, charge sheet has already been submitted to the trial court and as per the memo No. 445 dated 13.06.2016, the departmental proceeding has been initiated against the petitioner. On receipt of charge sheet from the Deputy Commissioner, Jamtara proposal for initiation of departmental proceeding was forwarded to the Hon'ble Chief Minister, Govt. of Jharkhand through the Chief Secretary and same has been approved on 07.06.2016. Accordingly, departmental proceeding has been initiated vide resolution No.445 dated 13.06.2016. On the recommendation of D.C., Jamtara departmental proceeding initiated and therefore, suspension order has been issued with valid and reasonable ground by the competent authority. Learned counsel for the respondents-State, J.C to S.C (Mines) has reiterated the averments made in the counter-affidavit. Learned counsel for the State has

assiduously submitted that Jharkhand Government Servants (Classification, Control & Appeal) Rules, 2016, under Rule 24 defines that a Government Servant may prefer an appeal against the order of suspension or order of penalty. The petitioner without resorting to the said appeal has directly approached this Court for relief. On the ground of alternative remedy, the writ petition is not maintainable. Learned counsel for the State further submits that the departmental proceeding is at very nascent stage, this Court under Article 226 of the Constitution of India should not exercise extra ordinary jurisdiction to interfere in the impugned order of suspension. In this respect, learned counsel for the State has referred to decision reported in (1998) 5 SCC535 5. After giving my anxious consideration to the submissions made at the Bar and on perusal of the relevant records, I am of the considered view that the petitioner has been able to make out a case for interference due to the following facts, reasons and judicial pronouncements stated hereinbelow:

6. (I) In the instant case, the challenge of the petitioner to the impugned order of suspension as contained vide Annexure-4 is on the ground that same has been passed with retrospective effect under Rule 100 of the Service Code purportedly on the ground of sanction for prosecution under Section 19 (1) B and 7/13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988. In the meantime, though the petitioner has been continued under the order of suspension, the departmental proceeding have been drawn up and charges in Prapatra K against the petitioner vide letter dated 17.02.2016 vide Annexure-7 for alleged irregularities committed by the petitioner during his posting District Education Officer, Jamtara which is also impugned in this writ application. Though, the suspension in contemplation of departmental proceeding or for sanction of prosecution under Prevention of Corruption Act is not a punishment but after submissions of the final form in the vigilance case before the Special Judge Vigilance Case there may not be justifiable reason for suspension nor there is remote possibility of the petitioner tampering with the records or any possibility of undue influence over the witnesses. The Hon'ble Apex Court in the case of Ganauri Mistry Vs. State of Jharkhand & Ors. reported in 2013 (4) JCR406(Jhr) has been pleased to summarize which is as under:

15. When an appointing authority proceeds to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and order of suspension should not be passed in a routine or automatic manner. It is not necessary to place a Government employee under suspension in every case where disciplinary proceedings are contemplated. Appointing authority must be satisfied that continuance of the employee in the same post or at the same station may cause a reasonable apprehension that it will influence or prejudice the enquiry and the disciplinary proceedings. It should always be kept in mind by the appointing authority that though suspension is not a punishment, however, it visits the employee with serious civil consequences and loss of reputation and prestige. 7 Therefore, an order of suspension should not be passed lightly, casually or without proper application of mind. Suspension order should not continue unduly long time without any cogent and justifiable ground. In the case in hand, no convincing reason is forthcoming from the counter-affidavit for placing to continue the petitioner under suspension. (II) The Hon'ble Apex Court in very recent decision reported in (2015) 7 SCC291 in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary And Another. The Hon'ble Apex Court has been pleased to inter alia hold that the currency of a suspension order should not be extended beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee. If memorandum of charges/charge-sheet is served, a reasoned order must be passed for extension of suspension. (III) So far continuation of departmental proceeding is concerned, this Court under Article 226 of the Constitution of India would not interfere with undergoing departmental proceeding unless it attains its finality provided no supervening circumstances exist to warrant such interference.

6. In view of the aforesaid reasons, the writ petition is disposed of with a direction to respondents to pass appropriate order on the question of revocation of suspension pending finalization of departmental proceeding within a period of four weeks from the date of receipt/communication of a copy of this order.

7. With the aforesaid observations and directions, the writ petition stands disposed of. (Pramath Patnaik, J.) RKM/- N.A.F.R.

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