

Bindeshwari Mandal Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Mar-08-2017

Appellant : Bindeshwari Mandal

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI. W.P. (S) No. 617 of 2012 Bindeshwari Mandal son of late Kishori Mandal, resident of Lalu Pokhar, Nagtola, Post Office-Munger, Police Station-Munger, District-Munger, Bihar Petitioner -V e r s u s- 1. The State of Jharkhand 2. The Principal Secretary, Animal Husbandry & Fishery Department, Government of Jharkhand, Nepal House, Post Office & Police Station-Doranda, District-Ranchi, Jharkhand.

3. The Director, Animal Husbandry, Government of Jharkhand, Nepal House, Post Office & Police Station-Doranda, District-Ranchi, Jharkhand. Respondents CORAM: - HONBLE MR. JUSTICE PRAMATH PATNAIK. For the Petitioner : - Mr. Saurabh Shekhar, Advocate. For the Respondents : - Mrs. Chandra Prabha, S.C. IV. C.A.V. On: -18.10.2016 Delivered On: - 08/03/2017 Per Pramath Patnaik, J.: In the instant writ application, the petitioner has inter alia prayed for issuance of an appropriate writ in the nature of certiorari for quashing the order, as contained in Memo No. 1080 dated 2.8.2011, issued by the respondent no. 2, pertaining to dismissal from services and further for issuance of an appropriate writ in the nature of mandamus, commanding upon the respondents to forthwith reinstate the petitioner in services on the post on which he was discharging his duties, prior to

issuance of the order dated 2.8.2011 alongwith all consequential benefits.

2. Sans details, the facts as disclosed and delineated in the writ application are that the petitioner has joined his services as a Class IV employee under the respondent authorities and was discharging his duties at Latehar in the Primary Health Center, Chakra Nagar and from there he was transferred vide order no. 9 dated 31.07.2007. It has been averred in the writ application that subsequently a fresh order was passed on 26.10.2007, modifying the earlier order dated 31.7.2007, whereby the order of transfer with respect to the petitioner has been modified and he was directed to report of the office of Touring Veterinary Officer, Balumath at Latehar. That in view of the subsequent order dated 26.10.2007, the petitioner was not relieved from his earlier place of posting. 2 However, in compliance to the order dated 26.10.2007 he has given his joining on 2.11.2007, but, the authorities have not accepted his joining, which would be apparent from the joining report dated 2.11.2007 along with the comments of the authorities dated 8.11.2007. It has been submitted that in view of the order dated 2.11.2007, the authorities have made a correspondence to the District Animal Husbandry Officer, who has stated that his joining cannot be accepted without the order of relieving from the earlier place of posting. Thus, the joining of the petitioner was not accepted and in lieu thereof, his salary has also been withheld and the grievance of the petitioner has not been redressed, in spite of specific representation made in this regard, and the respondent authorities instead of redressing the grievance of the petitioner, have put the petitioner under suspension vide order dated 4.4.2009, because of the reasons indiscipline and misconduct. A departmental proceeding has also been initiated against the petitioner vide memo no. 799 dated 4.4.2009. From perusal of the memo of charge, it is apparent that the charges of the year, 1992 have been alleged against the petitioner, apart from the charges of the year 2005 and 2006, which itself shows that the respondent authorities have taken action against the petitioner instead of redressing his grievances. Although the departmental proceeding has been directed to be initiated vide order dated 4.4.2009 and the inquiry report was already submitted on 31.10.2009, but, no final decision was taken, in spite of the reply to the second show cause notice having been filed by the petitioner on 4.12.2010 and hence he was compelled to file a writ petition before this Court

being W.P. (S) No. 2474 of 2009 and in the said writ petition, an order was passed on 3.8.2011 and in a great haste an antedated order was passed, dismissing the petitioner from services vide order dated 2.8.2011, which is itself clear from the order dated 5.8.2011 in W.P. (S) No. 2474 of 2009 (Annexure-1). Left with no other efficacious, alternative and speedy remedy, the petitioner has been constrained to approach this Court invoking the extraordinary jurisdiction of this Court under article 226 of the Constitution of India for redressal of his grievances.

3. Per contra Counter affidavit has been filed on behalf of the respondents, repelling the contentions made in the writ application. It has been inter alia, submitted in the counter affidavit, that a departmental proceeding was initiated for eight grievous charges against the petitioner vide departmental order memo 3 no. 799 dated 4.4.2009, in which R.D., A.H., Palamu Division Medininagar and D.A. H.O., Latehar were appointed as the inquiry officer/Conducting Officer and the Representing officer, respectively. For quashing his suspension order and departmental proceeding and releasing the arrears of salary withheld from March, 2009 a writ petition being W.P. (S) No. 2474 of 2009 was filed by the petitioner before this Court and the department was informed by this Court about it in May, 2009. An enquiry report was submitted by the Conducting Officer (R.D.,A.H., Palamu) vide letter no. 768, dated 31.10.2009 in the departmental proceeding initiated against the petitioner but the charges against the petitioner were proved or not those facts were not mentioned in the said enquiry report. The said enquiry report was returned in original to R.D., A.H., Palamu Division Medininagar (The Conducting Officer) vide departmental letter no. 2331 dated 4.12.2009 and was directed to submit the enquiry report clarifying that charges against the petitioner were proved or not. It has been further submitted that the clear report and comment was submitted by the conducting officer, R.D., A.H., Palamu vide letter no. 900, dated 30.12.2009 in the departmental proceeding. After the proper perusal of that enquiry report and comments of the enquiry report and records available in the department seven charges against eight charges were found proved. For proved seven charges the petitioner was directed vide department letter no. 849 dated 10.4.2010 to submit his second show cause. He was reminded vide letter no. 1331 dated 16.6.2010 and after that he was directed through newspapers. The reply/second show cause, dated 2.12.2010 was found

unsatisfactory and the petitioner was dismissed from services vide departmental order memo no. 1080 dated 2.8.2011. That vide departmental memo no. 1090 dated 3.8.2011, the department took a decision that the payment of only subsistence allowance for the suspension period (from 4.4.2009 to 2.8.2011) will be admissible to the petitioner. It has been further submitted that W.P. (S) No. 2474 of 2009, Rabindra Gope and another was disposed of on 5.8.2011 by this Court and the following facts are mentioned in that order : - i) Learned counsel for the petitioner submitted that no sooner did the order is passed by this Court dated 3rd August, 2011 back dated order, dated 2nd August, 2011 has been passed by lethargic respondent no. 2 as the petitioners went to serve with the 4 respondents and therefore, at this stage, they are not pressing this writ petition. ii) In this misfortune for the petitioners that though they were suspended on 4th April, 2009 till the order passed by the Court dated 3rd August, 2011, no order was passed upon the enquiry. Unnecessarily, inquiry was prolonged by the respondents because of their lethargic approach. Prima facie, it appears that the order is back dated i.e. 2nd August, 2011. As the petitioners are not pressing for further enquiry, this Court is restraining for holding further enquiry about the back dated order, dated 2nd August, 2011. iii) In view of the aforesaid facts, this writ petition is disposed of as not pressed, without entering into the merits of the case. Liberty is reserved with the petitioners to challenge the order by the respondents. It has further been submitted that after three days, the order dated 5.8.2011 was passed by this Court in W.P. (S) No. 2474 of 2009. That the departmental order memo no. 1080 dated 2.8.2011 is quite appropriate. The prayer of the petitioner is not maintainable and is liable to be dismissed in view of the facts stated hereinabove. In the light of the above mentioned facts and circumstances of the case, the instant writ petition is not maintainable and is liable to be dismissed in limine.

4. A rejoinder on behalf of the petitioner to the counter affidavit, filed on behalf of the respondents has been filed, wherein, it has been, inter alia, stated that the petitioner in this writ petition has challenged the order dated 2.8.2011 on the ground that the respondents authorities have passed the order of punishment on the basis of two reports that too when the second report was issued on the basis of the direction, given by the disciplinary authority, which is not at all permissible and the inquiry officer being a quasi judicial authority is supposed to act impartially

and not under the influence of the disciplinary authority and furthermore, the order of dismissal from services is not commensurate with the charge, levelled against the petitioner, if any. It has been further submitted that in the first inquiry report, the charge has not been proved against the petitioner and when the inquiry officer has forwarded the said report before the disciplinary authority, the disciplinary authority has not 5 accepted the same and directed the inquiry officer to submit a fresh report, which is contrary to the settled law, as because the moment any report is being submitted by the inquiry officer, the disciplinary authority is supposed to either accept the same or to differ with the same, after assigning reason of difference, but, instead of doing the same, the disciplinary authority has again directed the inquiry officer to submit a fresh report and on the basis of the said direction the order of punishment of dismissal from service has been passed and hence, the entire action taken by the respondents authorities is not just and proper. Hence action of the respondent authorities is unreasonable and illegal and, as such, the same is fit to be rejected.

5. Heard learned counsel for the petitioner and learned S.C. IV appearing for the respondent-State.

6. Learned counsel for the petitioner has vehemently submitted that the first enquiry report dated 31.10.2009 is substandard and vague. Learned counsel for the petitioner further submits that the 02nd enquiry report is cryptic. Learned counsel for the petitioner further submits that the enquiry report is perverse, as no witness, no evidence as well as no proof has been brought forward by the enquiry officer to prove the charges. Learned counsel for the petitioner further submits that the inquiry officer has been appointed after denial of the charges by the petitioner. Learned counsel for the petitioner further submits that the inquiry officer has concluded its inquiry, submitted the same before the disciplinary authority vide covering letter dated 31.10.2009 and from perusal of the said inquiry report, it appears that no specific finding with respect to proving or disproving of the charge has been given by the inquiry officer and it seems that the inquiry officer has conducted the inquiry in a very perfunctory manner. Learned counsel for the petitioner further submits that after submission of the inquiry report dated 31.10.2009, the same was returned back by the disciplinary authority i.e.

respondent no. 2 before the same inquiry officer for submitting a fresh inquiry report and in pursuance of the said direction, the inquiry officer has again submitted a fresh inquiry report on 30.12.2009. Learned counsel for the petitioner further submits that it is a settled principle of law that a consecutive inquiry cannot be permitted to be conducted. But, here in the instant case, the disciplinary authority has directed the inquiry officer to re-submit his report and the inquiry officer, who was duty bound to act as a quasi-judicial authority and to remain impartial, has acted under the influence of the disciplinary authority and under his dictate, he has again submitted a fresh inquiry report, which is not permissible and since the entire punishment is based upon the fresh inquiry report, the order of dismissal from service is not sustainable in the eyes of law. Learned counsel for the petitioner further submits that the petitioner was thereafter, directed to give reply to the second show cause notice vide notice dated 10.04.2010 to which the petitioner has submitted reply on 2.12.2010 denying the entire allegations and stating therein, that without affording an adequate and sufficient opportunity, the charges have been proved. Learned counsel for the petitioner further submits that thereafter, the respondent authorities have issued the impugned order of punishment dated 2.8.2011, whereby the petitioner has been dismissed from services. Learned counsel for the petitioner further submits that, thus, the order of dismissal is fit to be set aside, on the ground that in the inquiry, none of the charges have been proved specifically; the punishment has been passed on the basis of a fresh inquiry report; the inquiry officer has not acted impartially rather he has acted as an agent of the disciplinary authority; and further the order of dismissal is not commensurate to the charges, levelled against the petitioner; as also the inquiry officer has not considered the fact that the charges of the year, 1992 are being inflicted as a charge in the year, 2008-09 and hence on these grounds the order of dismissal from services is fit to be set aside. Learned counsel for the petitioner further submits that in the facts and circumstances of the case, the petitioners fundamental right, as guaranteed under Article 14 of the Constitution of India has been violated at the hands of the respondents. Thus, the act of the respondents authorities is highly arbitrary and unreasonable, which the respondents authorities cannot be permitted to do.

7. On the other hand, learned counsel for the respondent-State apart from justifying the impugned order of dismissal from service, has assiduously submitted that the petitioner has never cooperated with the enquiry officer and no illegality has been committed by the respondents authorities in passing the impugned order. Learned counsel for the respondent-State further submitted that the petitioner was found guilty in the departmental proceeding and seven grievous charges were proved. Learned counsel for the respondent-State further submitted that so the department decided to dismiss the petitioner from service 7 and order memo no. 1080, dated 2.8.2011 was issued and it has not been passed in haste nor it is not back dated.

8. After hearing the learned counsel for the respective parties at length and having given my anxious consideration to the issues involved in the instant writ application, I am of the considered view that the petitioner has not been able to demonstrate any legally tenable ground to warrant any interference in the impugned order of punishment due to the following factual and legal aspects : - (i) In the case in hand, while the petitioner was posted in 1 st Class, Veterinary Hospital, Chakla Nagar, Latehar, many complaints were received against him in the department and the matter was enquired into and on perusal of the enquiry report it would appear that the enquiry officer has opined that the petitioner is an indisciplined, impertinent and willful employee, who always neglects his duty, pesters his higher officers in the name of federation. He compels his higher officers to pay the salary for those periods in which he was absent and vexes with the Controlling authority without any reason. He corresponds directly with Honble President/Honble Governor/Prime Minister/Chief Minister and it is against the rule. After investigation made by S.D.O., Latehar and In charge Police Station/D.C. Latehar/S.P., Latehar have recommended the department to take severe action against the petitioner as per the Rule. After perusal of the said enquiry report, the department took a decision to suspend the petitioner and to initiate a departmental proceeding. Thereafter, the petitioner was placed on suspension for eight grievous charges against the petitioner. The enquiry report was submitted by the Conducting Officer but the charges against the petitioner were proved or not those facts were not mentioned in the said enquiry report, therefore, the said enquiry report was returned in original to R.D., A.H., Palamu Division Medininagar (The

Conducting Officer) vide departmental letter no. 2331 dated 4.12.2009 and was directed to submit the enquiry report clarifying that charges against the petitioner were proved or not as evident from Annexure-A to the counter affidavit. Thereafter, after proper perusal of that enquiry report and the comments of the enquiry report and 8 records available in the department seven charges against eight charges were found proved. Thereafter, the second show cause notice was issued and the reply filed by the petitioner was found unsatisfactory. Basing on the findings of the enquiry report and the reply to the second show cause, impugned order of dismissal has been passed vide order dated 2.8.2011. In the said order also, the department took a decision that the payment of only subsistence allowance for the suspension period (from 4.4.2009 to 2.8.2011) would be admissible to the petitioner. (ii) In the instant case, there has been no procedural irregularities from the initiation of departmental proceeding till its culmination. Moreover, the findings of the guilt in so far as seven charges after eight have been recorded by the enquiry officer. Therefore, basing on the findings of the Enquiry Officer, the disciplinary authority has passed the impugned order of punishment for dismissal from service, therefore, this Court does not find any infirmity or irregularity in the impugned order, passed by the disciplinary authority vide order dated 02.08.2011 (Annexure-11). The law on the question of exercising judicial review in a departmental proceeding has been well-crystallized in a catena of judgments by the Hon'ble Apex Court. At the cost of the petition, it would be pertinent to mention that there is absolutely no justifiable grounds available to interfere in the impugned order of punishment by exercising extraordinary jurisdiction under Article 226 of the Constitution of India, apart from minor infirmities, which does not go to the very root and moot issue of the writ petition.

9. In view of the reasons stated in the foregoing paragraphs, the impugned order of punishment as contained in Memo No. 1080, dated 2.8.2011 (Annexure-11) passed by the respondent no. 2 i.e. the Principal Secretary, Animal Husbandry & Fishery Department, Government of Jharkhand, Ranchi, does not warrant any interference by this Court. Accordingly, this writ petition, sans merit, is hereby dismissed. (Pramath Patnaik, J.) APK