

Pradip Prasad Vs. Land Reforms and Revenue Department

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Court : Jharkhand

Decided On : Jul-05-2017

Appellant : Pradip Prasad

Respondent : Land Reforms and Revenue Department

Advocate for Pet/Ap. : Mr. Prashant Pallav

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 5823 of 2016 with Cont. Case (Civil) No. 553 of 2016 Pradip Prasad, S/o Late Gajanan Prasad, R/o-P.O. + P.S+ District Khunti. Petitioner Versus 1.State of Jharkhand, the Chief Secretary, State of Jharkhand, Office at- Project Building, P.O. & P.S. Dhurwa, District-Ranchi.

2. The Principle Secretary, Department of Revenue and Land Reforms, Jharkhand, Office at-Project Building, P.O. & P.S-Dhurwa, District Ranchi. 3.The Principal Secretary, Department of Personnel, Administrative Reforms, Rajbhasha, Jharkhand, Office at-Project Building, P.O. & P.S. Dhurwa, District-Ranchi.

4. Dilip Tirkey, S/o not known to the petitioner, The Deputy Secretary, Department of Personnel, Administrative Reforms, Rajbhasha, Government of Jharkhand, Office at-Project Building, P.O. & P.S. Dhurwa, District- Ranchi. Respondents (in W.P. (S) No. 5823 of 2016) 1. State of Jharkhand, the Chief Secretary, State of Jharkhand, Office at- Project Building, P.O. & P.S. Dhurwa, District-Ranchi.

2. Mrs. Nidhi Khare, D/o not known to the petitioner, The Principle Secretary, Department of Personnel, Administrative Reforms, Rajbhasha, Government of Jharkhand, Office at-Project Building, P.O. & P.S. Dhurwa, District-Ranchi.

3. State of Jharkhand.

4. Chief Secretary, State of Jharkhand, Office at-Project Building, P.O. & P.S. Dhurwa, District-Ranchi. Opp. Parties (in Cont. Case (Civil) No. 553 of 2016) ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Prashant Pallav, Adv. For the Respondents : Mr. Rajesh Kumar, G.P.V. ----- th 7/Dated:

5. July, 2017 Per Pramath Patnaik, J: In the instant writ application, the petitioner has prayed for quashing the show cause notice dated 27.08.2016 issued under the signature of the Deputy Secretary, Department of Personnel, Administrative Reforms, Rajbhasha, Jharkhand, whereby petitioner has been asked to reply to the show cause within 15 days from the date of issuance of the show cause notice as to why the petitioner should not be inflicted punishment against the charge contained in letter no.1222 dated 10.04.2010 on the assumption that the charges appears prima facie to be correct and the petitioner has further prayed for direction to the respondents to grant senior selection grade from June 2013. 2 2. The brief facts leading to filing of the present writ petition is that vide letter dated 10.04.2010 charges were framed against the petitioner, alleging therein that the petitioner while working as the Circle Officer, Sadar, Chaibasa, mutated the tribal land in favour of the people who were not tribals without prior permission. On receipt of the said charges, the petitioner submitted his explanation contending therein that there is no violation Section 46 of the Chotanagpur Tenancy Act, 1908, in mutation case of the year 2006-07 because as per the provisions of law of the mutation, the order of the petitioner in mutation case are amenable to appeal and the same has been passed in the capacity of the quasi judicial authority and further the same does not create any right over the land. After consideration of the explanations submitted by the petitioner, Deputy Commissioner, West Singhbhum, Chaibasa forwarded his opinion to the respondents. The petitioner was served with punishment of censure, withholding of four increments. Being aggrieved by the

impugned order of punishment, the petitioner approached this Court vide W.P.(S) No.4548 of 2013, wherein vide order dated 08.03.2016 this Court had been pleased to quash the order of punishment dated 20.02.2013 and the writ petition was allowed. After disposal of the aforesaid writ application the respondent no.4 issued show cause notice dated 27.08.2016 calling upon the petitioner on the self same memo of charges contained in letter dated 10.04.2010. Though, vide order dated 19.08.2016 the order of punishment inflicted on the petitioner was set aside as evident from Annexure-9 to the writ petition. In pursuance to the show cause notice dated 27.08.2016, the petitioner has already submitted his reply on 20.09.2016 vide Annexure-10, contenting therein that the show cause notice dated 27.08.2016 is nothing but to circumvent the order passed by this Court dated 08.03.2016 passed in W.P.(S) No.4548 of 2013. Being aggrieved by the show cause notice dated 27.08.2016 the petitioner filed Cont. (Civil) No.553 of 2016 and the instant writ application and vide order dated 28.11.2016 this Court by a interim measure has been pleased to direct that the show cause notice dated 27.08.2016 vide Annexure-8 shall not be given effect to.

3. Mr. Prashant Pallav, learned counsel for the petitioner has vehemently submitted that the impugned notice dated 27.08.2016 vide Annexure-8 to the writ petition is in the teeth of the judgment passed by this Court in W.P.(S) No.4548 of 2013 since this Court has quashed the order of punishment on 3 merits as well as on procedural impropriety. Learned counsel for the petitioner further submits that the show cause notice is based on the charges which has been quashed by this Court and is an abuse of process of law which has been issued for mala fide reasons. Learned counsel for the petitioner further submits that the impugned show cause has been issued to deprive the petitioner from the benefit of promotion to senior selection grade.

4. Controverting the averments made in the writ application counter affidavit has been filed by the respondents. In the counter affidavit it has been inter alia submitted that on examination and review of the whole matter, the charges levelled against the petitioner in Form-K has been found prima facie proved. So he has been issued show cause to state reasons why disciplinary action should not be taken before imposition of penalty for the charges found prima facie proved

against him vide Annexure-D to the counter affidavit. It has further been submitted that present show cause notice has been served on the petitioner in view of the earlier order of punishment being quashed by the judgment of the Honble High Court dated 08.03.2016 on the ground that no show cause was issued prior to imposition of punishment, which prevented the petitioner to make an effective representation as envisaged under Rule 55(A) of Civil Service (Classification, Control and Appeal) Rules. Therefore, it has been decided to give adequate opportunity to the petitioner to disprove the proven charges resulting in passing of order of punishment.

5. Mr. Rajesh Kumar, G.P.V for the State on the other hand has reiterated the submissions made in the counter affidavit and assiduously tried to defend the action of the respondents by submitting that the present writ petition has been filed by the petitioner only to impede the process of disciplinary action initiated by the disciplinary authority. Learned counsel for the State further submits that since the charges against the petitioner were prima facie proved, show cause notice has been issued to the petitioner after approval of the same by the disciplinary authority. Accordingly, the allegation of mala fide alleged against respondent no.4 is nothing but is based on misplaced assumption.

6. After bestowing my anxious consideration to the rivalized submissions and on perusal of the records, I am of the considered opinion that the impugned show cause notice dated 27.08.2016, which has been issued vide Annexure-8, is not legally sustainable in view of the reasons stated hereinabove: (I) That the order of punishment, which was imposed in pursuance to charge dated 10.04.2010 was the subject matter of adjudication in W.P.(S) No.4548 of 2013 and this Court vide order dated 08.03.2016 has been pleased to quash the order of punishment, and accordingly, the writ petition has been disposed of. No liberty or latitude was given to the respondents to start the departmental proceeding de novo. Therefore, the impugned notice dated 27.08.2016 on the self same charges dated 10.04.2010 is not legally permissible. (II) In pursuance to order dated 08.03.2016 passed in W.P.(S) No.4548 of 2013 vide order dated 19.08.2016 the punishment inflicted on the petitioner has been quashed. Surprisingly, just after 8 days of quashment of the order of punishment, the respondents have issued show cause notice dated

27.08.2016. This Court fails to decipher as to what was the reason for issuance of show cause notice, whether it was a deliberate attempt on the part of the respondents to circumvent the order passed by this Court in W.P.(S) No.4548 of 2013 or it was under the mistaken notion to abridge the lacuna in the conduct of the disciplinary proceeding. But, whatever may be the reasons, in view of the order passed by this Court dated 08.03.2016 passed in W.P.(S) No.4548 of 2013, the issuance of show cause notice cannot be countenanced under any circumstances. Therefore, the issuance of the show cause notice dated 27.08.2016 warrants interference by this Court and the same be set at naught to meet the ends of justice.

7. In view of the reasons stated in the foregoing paragraphs and as a logical sequitur to the aforesaid observations, this Court is inclined to exercise the judicial review by quashing impugned show cause notice dated 27.08.2016 vide Annexure-8 to the writ petition.

8. Resultantly, the writ petition stands allowed.

9. In view of disposal of the writ petition and on perusal of the show cause filed on behalf of opposite party nos.1 and 2, Cont. Case (Civil) No. 553 of 2016 is hereby dropped. (Pramath Patnaik, J.) Saket/-

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