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Court : Patna

Decided On : May-15-2014

Judge : Jayanandan Singh

Appeal No. : Civil Writ Jurisdiction Case No. 3466 of 2003

Appellant : Sheikh Izzatullah

Respondent : The State of Bihar and Others

Judgement :

Petitioner has filed this writ application for quashing the Resolution contained in memo no.598 dated 25.3.2003 (Annexure-9) passed by the respondent no.3, by which, on conclusion of a departmental proceeding, he was inflicted with punishment of dismissal under the orders of the Governor, in terms of Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, 1959. Since the Resolution had been issued under the orders of the Governor, petitioner filed this writ application directly to this Court challenging the same. He has further prayed for a direction to the respondents to reinstate him as Range Officer of Forests with all consequential benefits.

The background facts of the case of the petitioner are that, after due selection and training, he joined as Range Officer in the office of Chief Conservator of Forest, Ranchi on 3.4.1982. Subsequently, in due course of posting, he joined at Dhalbhum under the State Trading Division, Jamshedpur in July, 1992. He

continued there for over a year and was transferred on 21.2.1994 to some other range and was relieved by the Divisional Forest Officer unilaterally. Sometime thereafter, on the charge of some omission and commission during his posting at Dhalbhum, he was suspended by a notification dated 22.6.1995, vide Annexure-1 with his rejoinder to the counter affidavit, under the orders of the Governor. It was stated that charge memo shall be issued later on. However, for more than two years no charge memo was issued and petitioner continued under suspension. In the circumstances, he moved the Ranchi Bench of this Court through CWJC No.4240 of 1996 (R) which was allowed by order dated 3.9.1997, vide Annexure-2 with the writ application, and his suspension was revoked on account of delay, but liberty was granted to the respondents to put the petitioner under suspension on the ground of pendency of criminal charges. Accordingly, by order dated 5.5.1998 his suspension was withdrawn. However, later on by letter no.1666 dated 8.3.1999 a departmental proceeding was initiated against him and by letter dated 18.5.1999, vide Annexure-3 with the writ application, enquiry officer was appointed who was directed to submit his report within 21 days. Charges were framed and were issued to him under memo as contained in Annexure-3. A proceeding was held and finally by the impugned order, as contained in Annexure-9, petitioner was inflicted with the punishment of dismissal. Records show that even before suspension an FIR was instituted against the petitioner, vide Annexure-1, for offence under Section 409, 420, 467, 468, 471 of the IPC in which after investigation charge-sheet was submitted and he was put on trial. The trial was finally concluded in 2001 and by judgment dated 6.7.2001, vide Annexure-7 with the writ application, petitioner was acquitted.

Opening his arguments, learned counsel for the petitioner submitted that on the same set of charges petitioner was acquitted by the learned trial court in the criminal trial. Hence, there could be no punishment in the departmental proceeding on the basis of the identical charges framed in the proceeding. He further submitted that, petitioner being a personnel of subordinate services, the proceeding held against him under the Civil Services (Classification, Control and Appeal) Rules, 1959 was bad in law as he was deprived of a right to appeal vested in a government servant under the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rule, 1935. Hence, he submitted that the entire

disciplinary proceeding held under the former rule was bad in law and without jurisdiction and therefore the order of punishment and the entire proceeding was fit to be quashed. In support of this submission, he placed reliance on a judgment of a Bench of this Court dated 30.9.2008 passed in CWJC No.13786 of 2001. On facts, he submitted that many of the findings of the enquiry officer were in favour of the petitioner and in fact enquiry officer found that unauthorized expenses of Rs.25,000/- for construction of a road had not been properly estimated by the DFO and were not properly entered into Divisional Book of Accounts and he also found that the measurement of the road had not been taken by the DFO. So far as charge of adding zero to the quantity as well as cost of diesel was concerned he submitted that the trial court, in a judicial proceeding, after considering the documentary as well as oral evidence, had found that no zero was added in the figures. So far as charge no.3 in respect of having spent Rs.24,171.12 on his own and not depositing Rs.10941.32 in treasury was concerned, he submitted that the petitioner had spent the amount on the directions of the DFO which were proved from letter dated 21.7.1993. He also submitted that this money was spent due to delay in opening of P.L. account. He submitted that this was the practice which was known as local arrangement. Hence, petitioner could not be held guilty for the same. So far as charge no.4 was concerned, learned counsel for the petitioner submitted that since the petitioner was transferred on 24.2.1993 he could not physically get the woods transported, though he had paid the full transportation charges. Hence, due to sudden transfer only, petitioner could not get transportation work completed and therefore could not be held guilty for the same. In respect of charge no.5 he submitted that ultimately alleged amount of misappropriation was reduced on enquiry to Rs.4,145/- only, and for the other allegation of misappropriation in respect of road construction expense he was not found guilty. Learned counsel also submitted that the petitioner had been demanding documents to file an effective reply to the charges, but only some of the documents were supplied and rest of the documents were not supplied even with the 2nd show cause notice. He further submitted that gross violation of principles of natural justice was committed by the enquiry officer by not supplying the rest of the documents and by not examining the witnesses to prove the charges.

A counter affidavit has been filed by the respondents in the case. It is stated that, on the face of it, the charges against the petitioner in the criminal trial and those in the departmental proceedings were not identical. It is stated that, out of eight charges framed in the departmental proceeding, only two were same and rest of them were different. Hence, the claim of the petitioner that, in the light of his acquittal from the charges by the trial court, he should have been exonerated in the departmental proceeding, has no merits. It is also stated that out of the documents which were demanded by the petitioner those which were available were supplied to him. It is stated that, in fact, on his transfer petitioner did not hand over charge of some of the documents, which he started demanding later on and hence the same could not be supplied as petitioner himself was in possession of those documents. It is stated that at one point of time petitioner being the custodian of those documents, onus was on him to prove that, upon his transfer, he had handed over the documents to the officer taking over charge of the office. It is also stated that, from the detailed enquiry report of the enquiry officer, as contained in Annexure-6, it could be evident that the show cause reply of the petitioner was considered in detail and thereafter the charge nos.2, 3, 4 and 5 were found proved against him. The enquiry officer also came to the conclusion that since charge nos.2, 3, 4 and 5 were found proved, the charge no.6, 7 and 8 also stood proved. It is also stated that thereafter 2nd show cause notice was issued to the petitioner with a copy of the enquiry report and he filed his reply. It is stated that this reply was also considered in detail, but the disciplinary authority found no substance in the reply and, therefore, found the petitioner guilty of the charges and passed the order of punishment of dismissal of petitioner in terms of Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, 1959 under the orders of the Governor. However, it is admitted that since the order of punishment of dismissal was passed in terms of Rule 49 of the said Rules, under the orders of the Governor, petitioner had no forum of appeal available to him. Learned counsel for the respondents, in view of the said judgment dated 30.09.2008 passed by a Bench of this Court in the said CWJC No.13768/01 accepted that the post of Range Officer fell in the category of Subordinate Services and hence disciplinary proceeding against the petitioner ought to have been held in terms of the Bihar and Orissa Subordinate Service (Discipline and

Appeal) Rule, 1935, which provided for a forum of appeal to the delinquent government servant.

After going through the said judgment passed in the said writ application, this Court finds that there is striking similarity in the two cases. In that case also the petitioner, who was Range Officer, was proceeded against under the Civil Services (Classification, Control and Appeal) Rules, 1959 and was awarded punishment of dismissal from service. The said order was challenged by the petitioner before this Court and it was specifically asserted that the appointing authority of Range Officer being the Chief Conservator of Forests and the post of Range Officer being a post of Subordinate Services, the Bihar and Orissa Subordinate Service (Discipline and Appeal) Rule, 1935 was applicable to him in which a forum of appeal was provided. But since proceeding had been held under the Civil Services (Classification, Control and Appeal) Rules, 1959 and the punishment had awarded in terms of Rule 49(1) and 55 thereof, the petitioner had been denied the right to appeal which vitiated the impugned order. This contention was considered by the Bench in detail and with the following observations it was held that the petitioner had indeed been deprived of a right to appeal:-

œUnder Rule 4 of the Bihar and Orissa Subordinate Service (Discipline and Appeal) Rule, 1935 every member of a Subordinate Services is entitled to appeal to the authority immediately superior to the authority which passes an order imposing penalties specified in Rule 2 of those Rules which include dismissal from service. Since the order of dismissal passed against the petitioner as contained in Annexure-1 is issued in the name of the Governor of Bihar under the authority of State of Bihar the impugned order has the effect of depriving the petitioner a right to appeal.?

The Bench also found infirmities in the order on facts. In the circumstances the order of punishment of dismissal was set aside and the matter was remitted back to the concerned authority in the State of Jharkhand, since in the meanwhile the services of petitioner had been allocated to the State of Jharkhand with a direction to pass appropriate orders on the basis of materials and observations in the judgment preferably within six months. The authorities of the State of Bihar were

directed to send all the records and proceedings relating to the petitioner to the concerned authority in the State of Jharkhand without any delay.

The present petitioner was also Range Officer. His punishment is also under Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, 1959. Though at the time of his posting he was at a place falling within the territorial jurisdiction of now Jharkhand State, but at the time of order of his dismissal he was posted under the Gaya Afforestation Division, Gaya. For this reason the proceeding was held and order of dismissal was passed by the Government of Bihar under the orders of the Governor of Bihar. But the fact remains that a Co-ordinate Bench of this Court, after detailed discussion, has held the post of Range Officer belonged to Subordinate Services and therefore has held that Bihar and Orissa Subordinate Service (Discipline and Appeal) Rule, 1935 was applicable in the case and not the Civil Services (Classification, Control and Appeal) Rules, 1959 under which proceeding was held, depriving the petitioner of right to appeal.

In the circumstances, following the said judgment of the Co-ordinate Bench, this Court has no option but to set aside the order of punishment, as contained in Annexure-9, which is hereby set aside. Following the said judgment, the matter of the present petitioner is also remitted back to the competent authority under the State of Jharkhand, to which State, it is stated that, the services of the petitioner were finally allocated as dismissed employee, who shall pass appropriate orders on the basis of all the materials and the observations in this order in accordance with law at an early date, preferably within six months from the date of production/communication of a copy of this order. It goes without saying that the authorities of the State of Bihar shall send all the relevant records and proceedings relating to petitioner to the concerned authority at Jharkhand without any delay.

This writ application is allowed to the extent indicated above.

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