

**Karma Minz Vs. Human Resource Development**

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**Court :** Jharkhand

**Decided On :** Apr-07-2015

**Appellant :** Karma Minz

**Respondent :** Human Resource Development

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No.5096 of 2013  
Karma Minz .... Petitioner Versus 1.The State of Jharkhand through its Chief Secretary 2. The Secretary, Human Resources Development Department, Ranchi 3. Joint Secretary, H.R.D. Department, Ranchi 4. Director, Primary Education, H.R.D. Department, Ranchi 5. Regional Deputy Director of Education, Palamau Division, Palamau 6. Deputy Commissioner, Latehar 7. District Superintendent of Education, Latehar ..... Respondents ----- CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : Mr. A.K.Sahani For the Respondents : Mr. Arbind Kumar, J.C to G.P.III .... 06/07.04.2015 Heard counsel for the parties. Petitioner was holding the post of Deputy Superintendent of Education at Latehar when he was served with charge-sheet on 8.8.2011 for certain alleged misconduct in relation to the process of selection of Para Teachers and also for failing to comply with the direction of the higher authorities. He was also charged with the allegation that he failed to discharge the responsibility in not getting the building of the Primary School, Bartoli constructed as per the estimate. Petitioner incidentally was placed under suspension earlier vide notification bearing memo no. 268 dated 23.6.2011(Annexure-1) on prima facie finding the

aforesaid charge in not conducting the selection process of Para Teacher in accordance with law true against him. Petitioner is stated to have submitted his reply to the charge on 22.8.2012. Petitioner attained the age of superannuation on 31.8.2012. The impugned order dated 22.12.2012 bearing memo no. 679 has been passed by the Principal Secretary, Human Resources Development Department, Government of Jharkhand thereafter imposing the punishment of recovery of an amount of Rs. 1,76,100/- from his service / gratuity head and also curtailment of 5% of his pension (Annexure-3). This apparently has aggrieved the petitioner to approach this Court in the present writ application along with a -2- prayer for payment of the entire post retirement dues including full pension, gratuity, G.P.F , leave salary etc. According to the learned counsel for the petitioner, the impugned order suffers from failure to comply the mandatory procedure for conduct of a departmental proceeding as neither the inquiry report dated 12.10.2012 referred to therein has been served upon him nor any second show cause has been issued before imposing the punishment. The categorical statement made at para 13 and 14 of the writ petition also stand un-refuted in the counter affidavit filed by the respondents, who have not annexed the inquiry report nor any second show cause notice. He further submits that the proceeding have continued after his retirement without expressly stating that the impugned order is being passed under the provisions of Jharkhand Pension Rules, if at all they apply to the petitioner's case on all four squares. It is submitted that there is no justification for the respondents to withhold other post retirement dues even after imposition of such punishment, which is still not being paid. Respondents who have appeared and filed their counter affidavit have stated that after the preliminary inquiry, the Deputy Commissioner, Latehar submitted a detailed report on 30.9.2010, Annexure-A based upon which petitioner was placed under suspension under the provisions of Rule 49 of the Civil Services (Classification Control and Appeal) Rules 1930. He was proceeded departmentally vide charge-sheet dated 8.8.2011 for the aforesaid misconduct and it was alleged that the petitioner had directly given approval to the selection of many Para Teachers within the district only on the recommendation of the Village Education Committee and the selected Para Teachers did not possess the requisite qualification. The Block Level Education Committee is the -3- competent authority to select Para

Teachers. Reference has been made to letter dated 8.8.2012 of the Block Education Extension Officer, Balumath that Para Teachers were wrongly selected by the concerned Village Education committee. Selection of these Para Teachers were directly approved by the petitioner and honorarium for a sum of Rs.1,76,100/- was wrongly paid to Para Teachers which is being recovered after the charges have been proved. It is their further case that after submission of the inquiry report by the Conducting Officer, the Principal Secretary, Department of H.R.D. has passed the order of punishment for withholding of 5% of pension amount and recovery of a sum of Rs. 1,76,100/- from his retiral benefits, since the petitioner has been found guilty of grave and serious charge by the Inquiry Officer. Learned counsel for the respondent has sought to add that the petitioner in fact admitted during inquiry proceeding that selection of Para Teacher was done by him. Such statement however appears to have been made on the basis of the preliminary enquiry report (Annexure-A) of 30.9.2010 submitted by the Deputy Commissioner, Latehar where after the charge-sheet was issued on 8.8.2011 for a proper departmental enquiry. Therefore, such plea of admission by the petitioner does not have much substance. I have heard counsel for the parties and gone through the relevant materials on record. From the narration of the chronology of facts as referred to herein above, it appears that during the pendency of the departmental proceeding initiated vide charge- sheet dated 8.8.2011 petitioner retired on 31.8.2012. However, though the respondents have referred about the submission of the inquiry report on 12.10.2012, but the inquiry report has not been brought on record and specific statement made in para 13 of the writ petition that copies of the inquiry report were never provided -4- to the petitioner before the impugned order was passed do not stand refuted by the respondents in their counter affidavit. Further specific statement made in para 14 that no second show cause was served upon him before imposing the punishment also do not stand denied by the respondents. The respondents have also enclosed a preliminary inquiry report submitted by the Deputy Commissioner, Latehar to the Principal Secretary, H.R.D Department dated 30.9.2010 containing his comments upon the show cause reply furnished by the petitioner that his explanation is not worthy of being accepted. It further appears that though there were two allegations for which he was proceeded against; one of the charge relating to the construction of a school

building contrary to the estimate was not found established against the petitioner even as per the impugned order. It therefore appears that though prima facie the allegation were found to be true on the basis of report submitted by the Deputy Commissioner, Latehar on 30.9.2010, but on initiation of the proceeding against the petitioner on 8.8.2011 after issuance of the charge-sheet under Form-Ka, the procedure for conduct of the inquiry has not been followed in proper manner. Petitioner appears to be totally oblivious of the content of the inquiry report and he was not even served the same nor the second show cause before the proposed punishment was imposed. Strangely the respondents have evaded the reply to the categorical assertion of the petitioner and failed to bring on record even the inquiry report. Though a formal order of conversion of the pending departmental proceeding under Rule 43 B of the Jharkhand Pension Rules may not have been required but the impugned order also does not reflect that it has been passed in purported exercise of such powers under the Jharkhand Pension Rules. -5- Having come to the aforesaid findings, it appears that the decision making process has suffered for failure to comply the Principle of Natural Justice and for not serving the copy of the inquiry report and second show cause notice upon the petitioner. In such circumstances, the impugned order dated 22.12.2012 bearing memo no. 679 cannot be sustained in the eye of law and is accordingly quashed. Respondents are however at liberty to pass a fresh order after serving inquiry report along with the second show cause notice upon the petitioner, if so advised in accordance with law. Respondents do not appear to have a sustainable defence in not releasing the other post retirement dues of the petitioner even during the pendency of the punishment order. Respondents would therefore release the admissible post retirement dues in favour of the petitioner within a period of 12 weeks from the date of receipt of copy of this order. The writ petition stands allowed in the aforesaid manner. (Aparesh Kumar Singh, J.) A. Mohanty

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