

Braj Kishore Singh Vs. The Managing Director Jharkhand State Mineral Development Corporation and Ors

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Court : Jharkhand

Decided On : Oct-08-2015

Appellant : Braj Kishore Singh

Respondent : The Managing Director Jharkhand State Mineral Development Corporation and Ors

Advocate for Pet/Ap. : Mr. Janardan Dueby

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 2436 of 2012
Braj Kishore Singh son of Late Sarju Singh, a retired Mining Foreman/ Supervisor of the office of the Jharkhand Mineral Development Corporation, Ranchi, resident of at & P.O. Rampurwa via Majhaulia, District West Champaran (Bihar).
Petitioner Versus 1. The Managing Director, Jharkhand State Mineral Development Corporation, Nepal House Area, Khanij Nigam Bhavan, Doranda, District Ranchi- 834002.

2. General Manager (Finance), Jharkhand State Mineral Development Corporation, Nepal House Area, Khanij Bhavan, Doranda, Ranchi-834002 3. The Chief of Finance, Jharkhand State Mineral Development Corporation, Nepal House Area, Khanij Nigam Bhavan, Doranda, Ranchi-834002 .. . Respondents
----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the

Petitioner : M/s Janardan Dubey & B.B. Sinha, Adv. For the Respondents : Mr. Rupesh Singh, Adv. ----- st CAV on 21 August, 2015 Pronounced on 08/10/2015 Per Pramath Patnaik, J.:

1. In the accompanied writ application, the petitioner has inter alia prayed for issuance of a writ of certiorari commanding/directing the respondents to quash the memo No.1604 dated 29.08.2011 issued from the office of the Jharkhand State Mineral Development Corporation, Ranchi containing a copy of the enquiry report dated 18.04.2008, which was served to the petitioner after his superannuation w.e.f. 31.10.2010, particularly when the petitioner had filed his writ petition namely W.P.(S) No.5399 of 2011 which was disposed of vide order dated 10.10.2011; and for issuance of a writ of mandamus commanding the respondents to make payment of the retiral dues to the tune of Rs.4,08,190.00 with statutory interest and compensatory penal interest.

2. The factual matrix, as delineated in the writ application in a nutshell is that initially the petitioner was appointed as Mines Manager in the office of the respondents then known as Bihar State Mineral Development Corporation of Bihar an undertaking which has been transformed into Jharkhand State Mineral Development Corporation Limited after bifurcation of the State of Bihar. Subsequently, petitioner was notionally promoted to the post of Mines Foreman and while posted at Chandula Simalgoda, 2 Sahebganj, retired from active service on attaining the age of superannuation on 31.10.2010. After retirement from service, the petitioner has been requesting the respondents for finalization and for payment of retirement dues. Due to inaction of the respondents, the petitioner left with no alternative approached this Court in W.P. (S) No.5399 of 2011 which was disposed of on 10.10.2011 with direction to the respondents to treat this writ petition as representation and decide the grievances and make payment of his all legal dues in accordance with law, rules and regulations, policies and Government enforceable orders applicable to the petitioner as expeditiously as possible, preferably within a period of altogether twelve weeks after giving adequate opportunity of being heard to the petitioner or his representative from the date of receipt of a copy of the order. Thereafter, the petitioner filed representation alongwith copy of the impugned order which was received on 18.10.2011 as per

Annexure-1 to the writ petition, and the petitioner was asked to appear in person or through his advocate and accordingly, the petitioner submitted his points before respondent no.1 with regard to alleged shortage of stock and store levelled against him. The enquiry which was instituted during 2004 relating to shortage of materials during 1982-83 to 1999-2000 was finally closed on 18.04.2008. Learned counsel for the petitioner has averred that out of 16 charge sheeted accused/ officials who have already retired and the retirement claims has been released either on superannuation or death on order of this Honble Court as evident from annexure-5 series. When the enquiry report which was transmitted to the petitioner was received by the petitioner after much delay, the petitioner left with no alternative has approached to quash the enquiry report which has been alleged to a very purpose.

3. During pendency of the writ application, the petitioner has filed a supplementary affidavit praying for issuance of a writ of certiorari for quashing of memo No.782 dated 04.05.2012 and memo no.813 dated 07.05.2012 issued by the respondents, which has been marked as Annexures-8 and 8/A to the supplementary affidavit.

4. Per contra, a counter affidavit has been filed on behalf of respondent nos. 1 and 2 repelling the averments made in the writ application. In the counter affidavit, it has been submitted that the prayer made in the writ petition is thoroughly misconceived in view of the fact that petitioner is fully aware of the fact of passing final order after second show cause and personal 3 hearing of the petitioner in the light of the enquiry report dated 18.04.2008 and the same has been served upon the petitioner by way of Memo no.792 dated 04.05.2012. It has further been submitted that petitioner had earlier filed W.P. (S) No.5399 of 2011 praying for direction upon the respondent authorities for payment of his post retirement benefits wherein the total claim of the petitioner was to the tune of Rs.3,91,430/-. However, the petitioner in the instant writ petition has revised his aforesaid claim to the tune of Rs.4,08,190/- and at the same time also filed contempt petition being Contempt (Civil) Case No.293/2012 against the answering respondent for non-compliance of the order dated 10.10.2011 passed in W.P. (S) No.5399 of 2011. It has further been submitted in the counter affidavit that the instant writ petition has become infructuous in view of the final order of punishment passed against the

petitioner on 04.05.2012 in the light of departmental enquiry conducted against him for shortage of minerals to the tune of Rs.11,30,384/-. It has further been submitted that the petitioner has not disclosed in the previous writ petition bearing W.P.(S) No.5399 of 2011 relating to departmental proceeding initiated against him for shortage of minerals during his tenure as Project Officer/Mines Manager at different projects of the respondent Corporation. It has further been submitted that the order of the Honble Court dated 10.10.2011 has already been complied by passing an order as contained in memo no.813 dated 07.05.2012 and the copy of the same has been served upon the petitioner as per Annexure-A to the counter affidavit. While the petitioner was posted at Semra-Saltua Magnetite Project, Palamau in the year 1983-84, 1985-86 and 1993-94 and also at Semra-Saltua Limestone Project during 1985-86, shortage of mineral stock of limestone and Magnetite was detected during his tenure as Mines Foreman and for which the petitioner was served show cause notice vide dated 24.11.1988, 03.04.1992 and 28.10.1996 and the same were not replied by the petitioner as evident from annexure-B series to the counter affidavit. The petitioner was proceeded departmentally by the erstwhile Bihar State Mineral Development Corporation through one Sri Champak Banerjee and the same could not be completed and in the meantime Jharkhand State Mineral Development Corporation came into existence on 07.05.2002 and after its incorporation when the officers of the newly incorporated company came across the files pertaining to shortage of minerals, a fresh enquiry officer was appointed vide memo no.2090 dated 10.11.2004, as per 4 annexure-C to the counter affidavit. The enquiry officer found the petitioner guilty of serious laches, misconduct committed by him resulting in shortage of minerals and accordingly a 2nd show cause was issued on 29.08.2011. A copy of the memo of charge dated 18.04.2008 is annexed as Annexure-D to the counter affidavit. It has further been submitted in the counter affidavit that the writ petition bearing W.P.(S) No.5399 of 2011 has been disposed of by this Honble Court in terms of order dated 10.10.2011 which has been complied by the respondents and the claim of the petitioner has been regretted by the concerned competent authority in terms of order as contained in memo no.813 dated 07.05.2012 passed in the light of the fact that the petitioner has been punished by memo no.792 dated 04.05.2012 finding him guilty of misconduct causing shortage of mineral, and

thereby resulting in monetary loss to the respondent Corporation to the tune of Rs.11,30,384/- as per Annexure-E to the counter affidavit. It has further been submitted that a detailed reasoned order of punishment as aforesaid has been passed against the petitioner in the departmental enquiry conducted against him and the delay in conclusion of the departmental enquiry was on account of the fact that the erstwhile Bihar State Mineral Development Corporation initiated enquiry against the petitioner through one Champak Banerjee who left the service of the Corporation in the year 1996 and even otherwise the petitioner had not been co-operating in the conduct of departmental proceeding against him and thereafter the respondent Corporation came into existence on 07.05.2012, whereafter a fresh enquiry officer was appointed vide memo no.2090 dated 10.11.2004 to enquire into the charges levelled against the petitioner. It has further been submitted that the legitimate post retirement benefits of other delinquent employees have been released and no final order could be passed against such other erring officer. It has further been submitted that if the petitioner so desired may file a representation/appeal before the Board of Directors of the respondent Corporation against the order of punishment as contained in memo no.792 dated 04.05.2012.

5. Heard Mr. Janardan Dueby, learned counsel for the petitioner and Mr. Rupesh Singh, learned counsel appearing for the respondents.

6. Learned counsel for the petitioner has strenuously urged that the order passed by the Jharkhand State Mineral Corporation Ltd. dated 07.05.2012 passed in Annexure-A and the order dated 04.05.2012 passed in Annexure-E to the counter affidavit are not legally sustainable since there has been inordinate delay in passing of the departmental proceeding. Therefore, the entire proceeding has been vitiated and no recovery of the retirement dues could have been passed by the respondents. Learned counsel for the petitioner further submits that the persons similarly placed like petitioner have been granted post retirement benefits whereas the petitioner has been singled out for recovery of the alleged shortage of mineral to the tune of Rs.11,30,384/- and the petitioner has been subjected to hostile discrimination and doctrine of parity ought to have been extended to the petitioner.

7. Learned counsel for the petitioner further submits that in view of the Jharkhand Pension Rules 43(b) no recovery could have been affected when the charges related to misconduct are beyond four years of the limitation. Therefore the entire proceeding has been vitiated being infraction of Rule 43(b) of the Jharkhand Pension Rules and is against the decision of Full Bench judgment reported in 2007(4) JLJR451 459 & 466 and is also against the dictum of Honble Apex Court held in Civil Appeal Nos.6770 and 6771 of 2013 arising out of SLP (C) Nos.1427 and 1428 of 2009 (State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava) wherein the Honble Apex Court referring to Dr. Dudh Nath Pandey vs. State of Jharkhand and Ors. as reported in 2007(4) JCR1Full Bench and in catena of cases has been pleased to hold that a person cannot be deprived of pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

8. Learned counsel appearing for the respondents by referring to counter affidavit filed on behalf of respondent nos. 1 and 2 has dexterously submitted that the instant writ petition is thoroughly misconceived in view of the fact that the petitioner is fully aware of the fact of passing a final order by the competent authority after 2nd show cause and personal hearing of the petitioner in the light of the enquiry report dated 18.04.2008 and the same has been served upon the petitioner by way of memo no.792 dated 04.05.2012. It has further been submitted that the instant writ petition has become infructuous on account of passing of final order of punishment 6 against the petitioner on 04.05.2012 in the light of the departmental enquiry conducted against him for shortage of minerals to the tune of Rs.11,30,384/-. It has further been submitted by the learned counsel for the respondents that in previous writ petition bearing W.P.(S) No.5399 of 2011, the petitioner had not disclosed before the Honble Court that several departmental proceeding had been initiated against him for shortage of minerals during his tenure as Project Officer/Mines Manager at different projects of the respondent corporation. Learned counsel for the respondents has further submitted that inquiry officer found the petitioner guilty of serious laches, misconduct committed

by him resulting in shortage of minerals and accordingly a 2nd show cause was issued to the petitioner on 29.08.2011 vide Annexure-D to the counter affidavit. Learned counsel for the respondents has further submitted that the writ petition bearing W.P. (S) No.5399 of 2011 was disposed of by this Honble Court in terms of order dated 10.10.2011, which has been complied by the answering respondent and the claim of the petitioner has been regretted by the concerned competent authority in terms of order as contained in Memo no.813 dated 07.05.2012 passed in the light of the fact that the petitioner has been punished by Memo no.792 dated 04.05.2012 finding him guilty of misconduct, causing shortage of mineral, resulting in monetary loss to the respondent corporation to the tune of Rs.11,30,384/- as evident from Annexure-E to the counter affidavit.

9. Having heard learned counsels for the respective parties at length and on perusal of the documents on record, the prayer of the petitioner in the writ petition is not legally allowable, in view of the following facts and reasons: (I) It appears that the petitioner in W.P. (S) No.5399 of 2011 did not disclose about the departmental proceeding initiated against him and the said writ petition was disposed of vide order dated 10.10.2011 by remitting the matter to the respondent authorities for taking decision in the matter of post retirement benefit of the petitioner, in accordance with law, rules, regulations and after affording ample opportunity of hearing to the petitioner. In pursuance to order passed in W.P. (S) No.5399 of 2011 order has been passed vide Memo no.792 dated 04.05.2012 for recovery of Rs.11,30,384/- from the petitioner for the loss suffered by the respondent-Corporation. (II) The departmental proceeding was initiated during the service period of the petitioner and the petitioner was given sufficient 7 opportunity to defend him. Since the very proceeding was initiated during his service tenure, the aforesaid decision cited by the petitioner are not applicable in the instant case since the facts and circumstances of the present case is different to the facts and circumstances involved in the aforesaid writ petition, letters patent appeal and the case of the petitioner stands on different footing inasmuch he was proceeded in a departmental proceeding during his service period in which the competent authority has found the petitioner guilty of misconduct causing shortage of mineral in the light of inquiry report. Accordingly, the punishment order as contained in Memo No.792 dated 04.05.2012 has been passed against the petitioner.

Moreover, the petitioner has not exhausted the alternative remedy i.e. appeal before the Board of Directors of the respondent-Corporation ventilating his grievances against the order of punishment. So far as doctrine of parity as advanced by the counsel for the petitioner is concerned, it is clarified that the petitioner in W.P. (S) No.2403 of 2006 (Chandra Mohan Sharma vs. State of Jharkhand through its Secretary, Ministry of Mines & Geology and Ors.) vide annexure-5 to the writ petition, W.P. (S) No.1776 of 2007 (Aranya Kamal Biswas vs. Jharkhand State Mineral Development Corporation Ltd. & Others) and in W.P.(S) No. 632 of 2008 (Rajendra Prasad Singh vs. The State of Jharkhand and Others) are not similar to the case of the petitioner, since in the case of the petitioner final proceeding has been concluded finding him guilty for causing pecuniary loss to the respondent-Corporation to the tune of Rs.11,30,384/- whereas in case of others as stated to be similarly situated, no final order as to culpability of guilt of others have been established. Therefore, the case of the petitioner is clearly distinguishable from others and the doctrine of parity is not extendable to the petitioner.

10. On cumulative effect of the facts, reasons and in view of the reasons stated in the foregoing paragraphs, the writ petition does not warrant any interference by this Court.

11. Accordingly, the writ petition is dismissed being devoid of merit. (Pramath Patnaik, J.) Saket/-

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