

Peter Trikey Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Dec-10-2015

Appellant : Peter Trikey

Respondent : State of Jharkhand

Advocate for Pet/Ap. : Mr. Rajiv Nandan Prasad

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 2175 of 2009
.... Peter Tirkey son of Late Markush Tirkey, resident of village Kutmu (New Area),
near Block, Colony, Lohardagga, P.O. P.S. And District Lohardagga. Petitioner
Versus

1. State of Jharkhand

2. The Principal Secretary, Department of Animal Husbandry and Fisheries,
Government of Jharkhand, Nepal House, Doranda, P.S. Doranda, District: Ranchi.

3. The Joint Director, Joint Director, Department of Animal Husbandry and
Fisheries, Government of Jharkhand, Nepal House, Doranda, P.O., P.S. Doranda,
District Ranchi

4. The Regional Director, Department of Animal Husbandry and Fisheries,
Government of Jharkahnd, Dhurwa, P.S. Jagannathpur, District Ranchi. ...
Respondents ... CORAM:HON'BLE MR. JUSTICE PRAMATH PATNAIK ... For the

Petitioner : M/s Rajiv Nandan Prasad & Ruchi Rampuria, Adv. For the Respondents : M/s Bhawesh Kumar, S.C.II Mr. Ravi Kumar J.C. to S.C.II 10/
Dated 10th December, 2015 Per Pramath Patnaik, J.: In the accompanied writ application, the petitioner, inter alia, has prayed for quashing the order dated 18.03.2009 issued by respondent no. 2 wherein it has been ordered that except subsistence allowance, no payment of any amount will be admissible to the petitioner for the period of suspension i.e. from 04.02.1996 to 16.08.99 and further punishment equivalent to dismissal has been inflicted upon the petitioner and thereby it has been ordered that payment of pension, gratuity, amount of unutilized earned leave shall not be payable to the petitioner and for commanding the respondents not to give effect to the order dated 18.03.2009 and for payment for entire retiral benefit to the petitioner, by quashing the entire departmental proceeding as initiated against the petitioner.

2. Sans details, facts as disclosed in the writ application in a nutshell is that the petitioner while continuing as an accountant had withdrawn 2 excess amount from the treasury, Lohardagga in the district of Lohardagga. Thereafter, a chargesheet was submitted by the C.B.I. wherein the name of the petitioner stood at serial 1 and Annexure D to the chargesheet wherein the name of the witness was listed and the name of the petitioner stood at serial

19. A C.W.J.C. No. 2792 of 1998 (R) was preferred by the petitioner. The writ petition was disposed of with a direction to the respondents to serve a chargesheet in the departmental proceeding to the petitioner and if they wish to proceed with the same, then conclude the same within six months failing which the suspension will stand revoke. Chargesheet was served upon the petitioner by the then State of Bihar to which the petitioner submitted a detailed reply stating therein that the same charges were being levelled against him for which he has not been sent for trial by C.B.I. and instead he has been made a witness. Thereafter, suspension order against the petitioner was revoked and the petitioner assumed charge in the place of posting. After bifurcation of the State of Bihar, the petitioner was allocated the State of Jharkhand. Since the petitioner made several representations to the authority of the department for early disposal/conclusion of the departmental proceeding and also for payment of arrear of due salary for the

period of suspension but no heed was paid. Thereafter, the petitioner approached this Court in W.P.(S.) No. 7425 of 2006 which has been disposed of vide order dated 19.12.2006 with a direction to the respondents to conclude the departmental proceeding within a period of two months. While continuing as accountant, the petitioner retired from service of office of the District Animal Husbandry and Fisheries Department, Palamau. After retirement from services, the impugned order dated 18.03.2009 has been passed against the petitioner.

3. Being aggrieved by the impugned order of punishment and left with no other efficacious, alternative remedy the petitioner has invoked the extraordinary jurisdiction under article 226 of the Constitution of India for redressal of his grievances. 3 4. Per contra, a counteraffidavit has been filed on behalf of the respondents controverting the averments made in the writ application. In the counteraffidavit, it has been, inter alia, submitted that the departmental proceeding was initiated against the petitioner on 26.04.1999 by the erstwhile State of Bihar and the Government of Jharkhand on 22.01.2003. For concluding the said departmental proceeding, the petitioner had filed W.P. (S.) No. 7425 of 2006 which was disposed of on 19.12.2006 directing the respondent State to conclude the departmental inquiry against the petitioner within a period of three months from the date of receipt of a copy of this order and finalize the disciplinary proceedings within a period of two months thereafter. In the light of the above order, the department concluded the enquiry and passed the order dated 18.03.2009. It has further been submitted in the counteraffidavit that the petitioner has raised a point that the respondent has no power to pass the impugned order inflicting punishments equivalent to dismissal without initiating proceeding under Rule 43(b) of Jharkhand Pension Rules. According to Rule 43 of Jharkhand Pension Rules: (a) Further good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of its, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive. (b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the

recovery from a pension or the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to government by misconduct or negligence, during his service rendered on reemployment after retirement. As per the Rule 27 of the Jharkhand Pension Rules, gratuity too comes under pension. 4 5. A supplementary affidavit has also been filed on behalf of the respondents reiterating the stand made in the counteraffidavit wherein it has been submitted that pursuant to a letter dated 26.02.2010 as contained in Annexure O to the supplementary affidavit, the District Animal Husbandry Office, Palamau, Medininagar vide his letter dated 02.03.2010 furnished upto date information to Deputy Secretary, Animal Husbandry & Fisheries Department, Government of Jharkhand, Ranchi mentioning therein the details of payments made to the petitioner with regard to retiral benefits given to the petitioner the details of which has been given in the tabular form in the supplementary affidavit. 6. Heard Mr. Rajiv Nandan Prasad, learned counsel for the petitioner and Mr. Bhawesh Kumar, learned S.C.II for the respondents and perused the documents available on records. 7. The learned counsel for the petitioner has strenuously urged that the impugned order of punishment is not legally sustainable since the punishment order which has been passed by the respondent does not find place in the Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, 1930. Rule 49 reads as under: Rule 49 The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of the services comprised in any of the classes (1) to (5) specified in rule 14, namely: (i) Censure. (ii) Withholding or increments or promotion including stoppage at an efficiency bar. (iii) Reduction to a lower post or timescale, or to a lower stage in a timescale. (iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders. [(iva) Compulsory retirement] (v) Suspension. (vi) Removal from the civil service of the Crown, which does not disqualify from future employment. (vii) Dismissal from the civil service of the Crown, which ordinarily disqualifies from future employment. 8. On perusal of the aforesaid rule it appears that the impugned order of punishment passed does not find place in the rule. Learned 5 counsel for the petitioner further submits that the impugned order of punishment

has been passed in violation of Rule 43(b) of Bihar Pension Rules. In order to buttress his submission learned counsel for the petitioner has referred (2012) 5 SCC 242 in the case of Vijay Singh Vs. State of U.P. & Ors., W.P.(S.) No. 981 of 2013 in the case of Wakil Singh V. State of Jharkhand & Ors., (2008) 1 JCR 381 in the case of Dr. Dhudh Nath Pandey Vs. The State of Jharkhand. 9. Learned counsel for the respondents has assiduously argued that the impugned order of punishment has been passed after considering the gravity of charges that the petitioner being an accountant was involved in excess payment from the treasury and the punishment inflicted upon the petitioner is just and proper. 10. After hearing the learned counsel for the respective parties and on perusal of the record, I am of the considered view that the counsel for the petitioner has been able to make out a case for interference by this Court due to the following facts, reasons and judicial pronouncements: I) Admittedly, the petitioner was retired on 30.09.2008 and the impugned order has been passed on 18.03.2009 after retirement from services. As per the Rule 43 (b) of the Bihar pension Rules no amount can be recovered from the petitioner neither by the State Government nor by the Competent Authority without initiating the proceeding under Rule 43(b) of Bihar Pension Rules. While the petitioner was not in service or thereafter in view of the provisions under Rule 43(b) the impugned order of punishment dated 18.03.2009 is not sustainable. II) On perusal of Rule 49 of Civil Services (Classification, Control and Appeal) Rules, 1930 it is 6 crystal clear that the impugned order of punishment has not followed the aforesaid rule. Therefore, as per the settled proposition of law the punishment not prescribed under the rule can never be awarded as per decision of Hon'ble Apex Court in the case of Vijay Singh Vs. State of U.P. & Ors. reported in (2012) 5 SCC 242. In the Case of Vijay Singh Vs. State of U.P. & Ors. Reported in (2012) 5 SCC 242 Honble Apex Court has hold at paragraph 11 is as under : 11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificates as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be terms as

punishment under the Rules. The rules do not empower the Disciplinary Authority to impose any other major or minor punishment. It is a settled proposition of law that punishment not prescribed under the rules, as a result of disciplinary proceedings cannot be awarded. 11. On perusal of the records, it is manifestly clear the penalty under Rule 49 of Civil Services (Classification, Control and Appeal) Rule, 1930 does not envisage the impugned order of penalty dated 18.03.2009 therefore, I am of the considered view that impugned order passed by disciplinary authority is not legally sustainable since rules do not empower the disciplinary authority to impose any punishment which is not prescribed under rules. 12. On cumulative effects of the facts, reasons and judicial pronouncements, the impugned order of punishment dated 18.03.2009 is hereby quashed and the writ application stands allowed and the matter is remitted back to the disciplinary authority to pass appropriate order in accordance with law within a period of two months from the date of receipt of the copy of this order. 13. With the aforesaid direction and observation the writ petition stands disposed of. (Pramath Patnaik, J.) MM

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