Aruna Nath Vs. Human Resource Development

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Court : Jharkhand

Decided On : Dec-14-2015

Appellant : Aruna Nath

Respondent : Human Resource Development

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 3473 of 2013 .... Aruna Nath daughter of late Harihar Nath, resident of Flat No. 301, Shivani Apartment, Near Julu Park, P.O., P.S. & DistrictHazaribagh. Petitioner Versus 1. The State of Jharkhand through the Secretary/Principal Secretary, Human Resources Development Department, Government of Jharkhand, having office at Project Building, P.O. P.S.Dhurwa, Town and DistrictRanchi.

2. The Deputy Secretary, Human Resources Development Department, Government of Jharkhand, having office at Project Building, P.O. P.S.Dhurwa, Town and DistrictRanchi. ... Respondents ... CORAM:HON'BLE MR. JUSTICE PRAMATH PATNAIK ... For the Petitioner : Mr. Manoj Tandon, Adv. For the Respondents : Mr. Rishikes Giri, J.C. to G.P.II. .... th 05/ Dated 14 December, 2015 Per Pramath Patnaik, J.: In the accompanied writ application, the petitioner, interalia, has prayed for quashing/ setting aside the order dated 11.05.2013 issued by the respondent no. 2 pertaining to the punishment of censure and stoppage of two increments with cumulative effect.

2. Bereft of unnecessary details the facts as disclosed in the writ application is that the petitioner was Class II officer of the Jharkhand State Education Service and at the time of filing the writ application she was posted as D.S.E., Hazaribagh. During her posting at the said post a memo of charge dated 12.02.2011 was framed against the petitioner and on 13.08.2010 the memo was communicated to the petitioner and the petitioner was asked to give a written statement/defence. In compliance to that charge, the petitioner has submitted written statement/defence to the memo of charge on 07.09.2009. The Deputy Secretary, Human Resources Development Department was appointed as Inquiry Officer. The petitioner also explained the defence as taken by her in written statement dated 07.09.2009 and 2 28.02.2011, but the fact remains that no inquiry report was ever supplied to the petitioner. Finally, the order of punishment of censure and stoppage of two increments with cumulative effects have been passed in the impugned order.

3. Being aggrieved by the impugned order of punishment, the petitioner having no other efficacious alternative remedy has invoked the extraordinary jurisdiction to this Court under article 226 of the Constitution of India for redressal of his grievances.

4. Per contra a counteraffidavit has been filed on behalf of the respondents repelling the averments made in the writ application. It has been, interalia, submitted in the counteraffidavit that due to alleged involvement in the irregularities committed by her as District Superintendent of Education, Bhagalpur contained in letter dated 31.10.2009 and 12.02.2011, a departmental proceeding was initiated against the petitioner and the conducting officer after due inquiry has submitted inquiry report and basing on the inquiry report the impugned order of punishment of censure and stoppage of increments with cumulative effect has been passed vide notification dated 11.05.2013. It has also been submitted that, the punishment passed by the disciplinary authority are not a major punishment hence there is no need of issuing second show cause.

5. Learned counsel for the petitioner strenuously argued in this Court that the impugned order of punishment has been passed in violation of principle of natural justice. Moreover, procedure for departmental inquiry ought to have adhered prior

to infliction of the major punishment. In the instant case, the same having not been done rendered the impugned order of punishment a nullity. Moreover, the copy of the inquiry report has not been given to the petitioner which has caused serious prejudice to the petitioner. Learned counsel for the petitioner further submits that the impugned order passed by the respondent no. 2 is violative to the Articles 14, 21 & 300 A to the Constitution of India. 3

6. As against this, learned counsel for the respondents has assiduously countered the submissions made by the learned counsel for the petitioner by advancing his arguments that basing on the alleged irregularities, omissions and commissions made by the petitioner the matter has been inquired into and the order of punishment inflicted upon the petitioner. There is no infirmity and illegality in the impugned order of punishment. Learned counsel for the respondents further submits that the impugned order of punishment is an appealable order and the petitioner without making an appeal before the authority has invoked the extraordinary jurisdiction of this Court despite availability of alternative remedy. Hence, the writ application is not maintainable.

7. After hearing learned counsel for the respective parties at length 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) On perusal of the impugned order dated 11.05.2013 at Annexure 3 to the writ application, it appears that the order of censure and stoppage of increments with cumulative effect has been passed which is a major punishment and before infliction of major punishment a regular departmental inquiry has not been conducted. The departmental inquiry ought to have been initiated but in the instant case the same has not been done. Hence, the impugned order at Annexure3 is not legally sustainable. In the case in hand, admittedly procedure for imposing major penalty has not been followed before awarding the punishment to the petitioner. No second showcause notice was issued. There was denial of right to representation which the petitioner was entitled in accordance with Rule 55 of the Civil Services (Classification, Control 4 and Appeal) Rules. Therefore the impugned order is liable to be interfered with. II) In the instant case, admittedly, the inquiry report has not been supplied to the

petitioner prior to the infliction of punishment and also non supply of the inquiry report to the petitioner has caused serious prejudice to the petitioner. III) Whether the stoppage of annual increment with cumulative effect is a major punishment. Hon'ble Apex Court in the case of Kulwant Singh Gill Vs. State of Punjab reported in 1991 Supp (1) SCC 504 held that: Withholding of increments of pay simplicitor without any hedge over it certainly comes within the meaning of Rule (iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee was cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. In other words, the clock is put back to a lower stage in the time scale o pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The Supreme Court in later part has stated that the disciplinary authority is not empowered to impose penalty of withholding increments of pay with cumulative effect, except after holding inquiry and following the prescribed procedure. Nonobservance thereof would render the order without jurisdiction or authority of law and per se void. IV) Hon'ble Apex Court in the case of M.P. State Agro Industries Development Corpn. Ltd. And Another Vs. Jahan Khan reported in (2007)10 SCC 88 has again reiterated that the stoppage of three increments with cumulative effect being a major penalty, it could not be 5 imposed without holding a regular departmental enquiry as per the procedure laid down for imposition of a major penalty. In the instant case, though it is true that the penalty order impugned in the writ petition was appealable in terms of the aforenoted Regulations but having coming to the conclusion that the order was per se illegal being violative of the principles of natural justice, it cannot be construed that the writ petition is not maintainable on the ground that impugned order is appellable. 8. On cumulative effects of the facts, reasons and judicial pronouncements and their logical sequitor to the reasoning given in foregoing paragraphs the impugned order of punishment dated 11.05.2013 is not legally sustainable and is hereby quashed and the writ application is allowed. Nonetheless, if there is sufficient ground for any

proceeding against the petitioner, the respondents will be at liberty to proceed in accordance with law. 9. With the aforesaid direction the writ petition stands disposed of. (Pramath Patnaik, J.) MM