

Kumari Chitralekha Singh Vs. Human Resource Development

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Court : Jharkhand

Decided On : Jan-21-2016

Appellant : Kumari Chitralekha Singh

Respondent : Human Resource Development

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S.) No. 6673 of 2013
.... Kumari Chitralekha Sinha, wife of Sri Shailendra Kumar, resident of Qr. No. 2052, Sector-VIII/A, Street-12, P.O. & P.S.-Sector IX, Bokaro Steel City ...
Petitioner Versus 1. The State of Jharkhand 2. The Director Primary Education, Human Resources Development Department, Government of Jharkhand, Project Building, P.O. & O,S.-Dhurwa, District-Ranchi.

3. The Commissioner, North Chhotanagpur, Hazaribagh, P.O.+P.S. +District-Hazaribagh.

4. The Deputy Commissioner, Bokaro, P.O. & P.S.& District-Bokaro.

5. The District Superintendent of Education-cum-Sub-Divisional Education Officer, Chas, P.O. & P.S.-Chas & District-Bokaro.

6. The Area Education Officer, Chas, P.O. & P.S.-Chas, District- Bokaro. ...
Respondents ... CORAM:HON'BLE MR. JUSTICE PRAMATH PATNAIK ... For the
Petitioner : Mr. Prabhat Kr. Sinha, Adv. For the Respondents : Mr. Sumir Prasad,
S.C.-I CAV on 16th December, 2015 Pronounced on :

21. 01 /2016 Heard learned counsel for the petitioner and State.

2. In the accompanied writ application, the petitioner has, inter-alia, prayed for issuance of certiorari for quashing of the order dated 17.08.2010 (Annexure-5) issued by respondent no. 5 pertaining to imposition of punishment of stoppage of three annual increments with cumulative effect, stoppage of difference of salary for the period of suspension and the petitioner was transferred to another school i.e. Primary School, Pupunki Circle, Chas-III, mentioning therein that the petitioner is imposed with minor punishment under Rule 8(1) (i) & (iii) of the Bihar State Government Elementary School Teachers (Transfer and Disciplinary Proceeding) Rules, 1994.

3. The facts as disclosed in the writ application in a nutshell is that the petitioner was appointed as Assistant Teacher on 30.11.1988 and was posted in Primary School, Sardaha, Dhanbad (Now Bokaro). Thereafter, the petitioner continued to discharge of her duties to the utmost satisfaction of the authorities and without any blemish in her service. While the petitioner continuing at Middle School, Harila, 2 Bokaro an allegation was levelled against her on 14.11.2009 that she has assaulted students by stick and this fact has been informed to the respondent no. 5 by respondent no. 6 that the assault took place on 14.11.2009 on Children's Day and apart from assault there was also allegation of non-performance of duties, using abusive language to students. Thereafter, the petitioner was suspended vide memo dated 14.11.2009 and a charge-sheet was issued to the petitioner vide memo dated 26.02.2010 by respondent no. 5 and the petitioner accordingly submitted her show-cause. An enquiry was conducted by the Inquiry Officer-cum-Area Education Officer, Bermo (Bokaro) and a report was submitted, finding the petitioner guilty of charges. Thereafter, the petitioner being found guilty of charge nos. 1 and 2 had been ordered the punishment of stoppage of three annual increments with cumulative effect besides she has been transferred to another school and was also denied the difference of salary for the suspension period.

4. Being aggrieved by the order of punishment, the petitioner submitted representation on 13.08.2010 and 06.11.2012 vide Annexure-6 series. The Director, Primary Education (respondent no.

2) has written to the respondent no. 5 vide letter dated 18.06.2013 for needful action.

5. Being aggrieved by the order of punishment, the petitioner having no other efficacious, alternative remedy has invoked the extraordinary jurisdiction of this Court under article 226 of the Constitution of India.

6. Heard Mr. Prabhat Kr. Sinha, learned counsel appearing for the petitioner and Mr. Sumir Prasad, learned S.C.-I appearing for the respondents 7. Learned counsel appearing for the petitioner has submitted that the impugned order of punishment of stoppage of three increments with cumulative effect is a major punishment as such the respondents were duty bound to follow the procedure of law before imposing major punishment. In the instant case, the procedure has not been followed because no show-cause notice has been issued to the petitioner before infliction of punishment. Learned counsel for the petitioner further 3 submits that the non supply of the copy of the inquiry report to the petitioner prior to infliction of punishment has vitiated the whole proceeding and thereby gross prejudice has been caused to the petitioner since one Sudhir Kumar has not been cross-examined. Learned counsel for the petitioner further submits that on perusal of inquiry report at Annexure-4 it appears that charge nos. 1 and 2 have not been conclusively proved. Therefore, the impugned order of punishment is bad in law and liable to be quashed. Learned counsel for the petitioner further submits that the impugned order of punishment has been passed at dictates of the Deputy Commissioner as per the Bihar State Government Elementary School Teachers (Transfer and Disciplinary Proceeding) Rules, 1994 as per the notification dated 16.06.1994 envisaged under rule 10. To buttress his submissions learned counsel for the petitioner referred to the decisions reported in 1. (1991) Suppl. 1 SCC5042. 2015 (1) JBCJ478HC3 2014 (1) JBCJ97(HC) 4. 2014 (4) JCR105SC8 Learned counsel for the respondents Mr. Sumir Prasad, S.C.-I, dexterously submitted by referring to the averments made in the counter-affidavit filed on behalf of the respondent nos. 5 & 6 that the petitioner herself responded to the proceeding by submitting show- cause with reference to the context of charge sheet vide letter dated 16.04.2010 and the show-cause submitted by her to Regional Education Officer, Bermo, Bokaro has not satisfactorily replied the charges levelled against

her rather it was an effort to conceal the facts on the part of the petitioner and hence her contention that she was never given any information regarding the proceeding is falsified. It is stated that the Court will be pleased to peruse the letter no. 291 Chas, dated 14.11.2009 which reveals the whole fact that how the petitioner is indisciplined, misconduct in her performance of discharging duties and responsibilities as a teacher as provided in Annexure-B to the 4 counter-affidavit. On the report dated 13.08.2010 to Deputy Commissioner, Bokaro shows that no latches have been committed by the respondent in issuing charge sheet against the petitioner. Learned counsel for the respondents has strenuously urged that the procedure has been followed from the day of initiation of proceeding till its culmination. So there is absolutely no ground to interfere with the impugned order of punishment. Since there is no infirmity in the impugned order and the impugned order of punishment has rightly been imposed upon the petitioner.

9. After hearing the respective parties at length and on perusal of the relevant records, it appears that the petitioner has been able to make out the case for interference of this Court due to following facts, reasons and judicial pronouncements: (I) That the Hon'ble Apex Court in case of Kulwant Singh Gill Vs. State of Punjab reported in (1991) Supp 1 SCC504 relevant being para 4. In Kali Pada Mahato vs. State of Jharkhand & Ors. reported in 2015 (1) JBCJ478[HC] is relevant on the issue of withholding of three increments with cumulative effect is a major punishment imposition of which requires due compliance of service of second show cause with a copy of inquiry report prior to infliction of punishment. Therefore, the impugned order of punishment dated 17.08.2010 relating to imposition of punishment of stoppage of three annual increments with cumulative effect has been vitiated on that score. (II) Learned counsel for the petitioner has relied upon the judgment in the case of Surjit Ghosh vs. Chairman & Managing Director, United Commercial Bank & Others reported in (1995) 2 SCC474 specifically para 6 on the issue that where right to appeal has been provided to the higher authority, employee concerned cannot be deprived of his substantive right and the order of punishment passed by the higher authority is liable to be set aside. In the instant case, the impugned order of punishment at dictates of the higher authority i.e. Deputy Commissioner, is assailable. (III) In the instant case, the major punishment has been 5 imposed but neither the copy of

the inquiry report has been supplied nor second show cause has been issued prior to imposing of the order of major punishment. Learned counsel for the petitioner relied upon judgment of Managing Director of ECIL Hyderabad and Ors. Vs. B. Karunakar & Ors. Reported in (1993) 4 SCC727 specifically para 26 and in the case of Punjab National Bank Ors. Vs. Kunj Behari Misra reported in (1998) 7 SCC84 para 17 on the issue that copy of inquiry and second show cause is necessary before passing the major punishment. In the aforesaid facts and circumstances, the decision making process has suffered at various levels as indicated herein above and the petitioner has been denied from the copy of the inquiry report and second show cause which has resulted in gross prejudice to the petitioner by rendering impugned order of punishment dated 17.08.2010 vide Annexure-5 reasonably susceptible accordingly, the impugned order of punishment is quashed.

10. The writ petition is allowed, however, it would be left open to the respondents authority to proceed afresh after service of second show cause along with the copy of the inquiry report to the petitioner in the departmental proceeding in accordance with law.

11. With the aforesaid direction, the writ petition stands allowed. (Pramath Patnaik, J.) The Jharkhand High Court, Ranchi Dated: /01/ 2016 MM /AFR/NAFR

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