

Pradip Prasad Vs. Land Reforms and Revenue Department

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Court : Jharkhand

Decided On : Mar-08-2016

Appellant : Pradip Prasad

Respondent : Land Reforms and Revenue Department

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 4548 of 2013
Pradip Prasad, S/O- Late Gajanan Prasad, R/O- P.O. + P.S.+ District-Khunti.
Petitioner Versus 1. State of Jharkhand, through, The Chief Secretary, State of
Jharkhand, Office at- Project Building, P.O. & P.S. - Dhurwa, District-Ranchi.

2. The Principle Secretary, Department of Revenue and Land Reforms,
Jharkhand, Office at- Project Building, P.O. & P.S.-Dhurwa, District-Ranchi.

3. The Principle Secretary, Department of Personnel, Administrative Reforms,
Rajbhasha, Jharkhand, Office at- Project Building, P.O. & P.S.-Dhurwa, District-
Ranchi.

4. The Deputy Secretary, Department of Personnel, Administrative Reforms,
Rajbhasha, Government of Jharkhand, Office at-Project Building, P.O. & P.S.-
Dhurwa, District-Ranchi.

5. Deputy Commissioner, West Singhbhum, Chaibasa, having its office at- P.O. +
P.S.-Chaibasa, District-West Singhbhum. Respondents --- CORAM : HON'BLE
MR. JUSTICE PRAMATH PATNAIK --- For the Petitioner : Mr. Prashant Pallav,

Advocate For the Respondents : Mr. Ashish Kr. Shekhar, J.C. to G.P. VI ----- CAV on 17.12.2015 Pronounced on 08 / 03 /2016 Per Pramath Patnaik, J.

In the accompanied writ application, the petitioner has inter-alia prayed for quashing of the sanction order dated 31.01.2013 of the learned Advisor of Governor pertaining to sanction of punishment which was communicated to the petitioner vide punishment order dated 20.02.2013 and for quashing of the order of punishment imposed vide memo dated 20.02.2013 (Annexure-5) and for issuance of appropriate writ of direction upon the respondents to consider the name of the petitioner for promotion in senior selection grade, Bihar Administrative Service, since juniors to the petitioner have already been promoted in the senior selection grade.

2. The factual matrix as delineated in the writ application, in a nutshell, is that in pursuance to letter dated 15.03.2010 of the Deputy Secretary, 2 Department of Revenue and Land Reforms, Jharkhand, Ranchi respondent no.5/Deputy Commissioner, West Singhbhum, Chaibasa vide letter dated 10.04.2010 framed charges against the petitioner, alleging therein, that the petitioner while working as the Circle Officer, Sadar, Chaibasa mutated the tribal land in favour of the people who were not tribals without prior permission. The petitioner on receipt of the same submitted his reply, explaining therein, that there was no violation of Section 46 of the Chotanagpur Tenancy Act, 1908 in mutation cases of the year 2006-07 because as per the provisions of law of the mutations, the order of the petitioner in mutation cases are amenable to appeal and the same has been passed by quasi-judicial authority and the same does not create any right over the land. The respondent no.4 sought opinion of the Deputy Commissioner, West Singhbhum, Chaibasa on the explanation of the petitioner and the opinion was forwarded to the respondent authorities accepting the explanation submitted by the petitioner vide letter dated 02.12.2012 Annexure-4 to the writ application. Thereafter, the petitioner was served with the punishment of censure withholding of four increments. Being aggrieved by the order of aforesaid punishment, the petitioner, left with no other alternative, efficacious and speedy remedy, has invoked extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances. Learned counsel for the petitioner has vehemently submitted that

on perusal of the charges, it would be apparent that the charge is misconceived. Learned counsel for the petitioner further submits that the respondents have passed the order of punishment without any inquiry and the statement of respondent no.4 made on 24.12.2012, in the official file noting, which is 3 conclusive to prove the case of the petitioner, therefore, the punishment order passed by the respondents, being passed in violation of natural justice, is not legally sustainable. Learned counsel for the petitioner further submits that the provisions of Public Servant's Enquiry Act, 1850 has not been duly complied with in the present case. Learned counsel for the petitioner while submitting that the charge not being approved by the disciplinary authority has become non est in the eye of law in that respect, learned counsel for the petitioner has referred to judgment as reported in (2014) 1 SCC351 in the case of Union of India And Others Vs. B.V. Gopinath with other analogues cases. Learned counsel for the petitioner further submits that regarding Section 46 of the Chhotanagpur Tenancy Act, 1908, in Mutation Cases of 2006-07, the order in the said case was amenable to appeal as the same has been passed by quasi- judicial authority and the same does not create any right over the land. In that respect, learned counsel for the petitioner has referred to the decisions reported in (2004) 4 JLJR425 in the case of Urmila Prasad Vs. State of Jharkhand & Ors. and also (2006) 2 JLJR287 in the case of Neel Kamal Vs. State of Jharkhand & Ors., wherein learned Single Judge has held that so far as mutation is concerned, the interest is required only to assess, the applicant is in possession or not. Mutation by itself is not a document to show right, title and interest. Learned counsel for the petitioner has further submitted that as per the Civil Services (Classification, Control and Appeal) Rules, 1930, the minor penalty upon framing of charges and giving an opportunity to make an effective representation and upon taking into consideration the materials on record, the penalty imposed for good and sufficient reasons. In this respect, learned counsel for the petitioner has referred to decision of the Hon'ble Patna High Court as reported in (1993) 1 4 BLJR597 in the case of Bhageshwar Jha Vs. State of Bihar. Learned counsel for the petitioner further submits that mutation power is exercised by Bihar Tenancy Holding (Tenancy of Records) Act, 1973. In this respect, learned counsel for the petitioner has referred to decisions of the Hon'ble Patna High Court as reported in 2001 (1) BBCJ222 in the case of Bela

Pandey Vs. State of Bihar & Ors.

3. Counter-affidavit has been filed on behalf of respondent Nos. 3 and 4 controverting the averments made in the writ application. It has been inter- alia submitted in the counter-affidavit that the Deputy Commissioner, West Chaibasa sent a memo of charge, Form-K vide letter dated 10.04.2010, relating to tenure of the circle officer, Sadar Chaibasa. The charges leveled against the petitioner have been mentioned, that two charges have been framed against the petitioner pertaining to violation of rule-46 of Chhotanagpur Tenancy Act, 1908 and settlement of land which has been obtained by non-tribal people from minor settlee Naresh Devgam which was sold on the basis of fabricated documents by his father Sri Dumbi Devgam on his behalf vide registered sale deed dated 21.11.1963 in violation of Rule 46 of the Chhotanagpur Tenancy Act. The petitioner approved mutation of the said land in favour of non-tribal people on the basis of fabricated documents in violation of rule-46 of the Chhotanagpur Tenancy Act. In this way, it is evident that the petitioner approved mutation of tribal land in favour of non-tribal people in violation of rule 46 of the Chhotanagpur Tenancy Act and in negligence of order issued by the Government from time to time. It shows autocratic behaviour, indiscipline and dereliction of duty on his part which is against the code of conduct of the government servant, because of which show cause was issued, in compliance of which he submitted his explanation 5 dated 24.02.2011 and the opinion of the Deputy Commissioner, West Singhbhum, Chaibasa sought on the explanation. The Deputy Commissioner, West Singhbhum, Chaibasa opined that explanation of the petitioner was acceptable. It is further submitted that the charges against the petitioner, his explanation and opinion of the Deputy Commissioner, West Singhbhum, Chaibasa, was examined and reviewed by the department. The fact which become after review:- (i) In kolhan region the wilkinson's rule is in force and the manaki/munda has got special powers role of Circle Inspector/Halka Karamchari. (ii) Charge no.2 that the land settled non-tribal has been sold on the basis of fabricated document and mutation was approved by the petitioner in his favour. (iii) Petitioner failed to protect the tribal land which amounts to dereliction of duty on his part. (iv) Mutation of the petitioner report of the Halka Karamchari and the Circle Inspector of the revenue collection is not acceptable. After examination and review of the whole matter the charges

levelled against the petitioner were found proved. The punishment of censure and stoppage of four increments with non-cumulative effect awarded to him vide department resolution dated 20.02.2013. Since the punishment awarded was minor, so the departmental proceeding was not instituted against him before awarding the said punishments. Mr. Ashish Kr. Shekhar, J.C. to G.P. VI, learned counsel for the respondents basing on the counter-affidavit has assiduously advanced his argument that no infirmity or illegality has been committed by the respondents by imposing the minor punishment in which full fledged inquiry was not required and the decision of the respondents has been passed taking into consideration the charges, explanation and opinion of the Deputy Commissioner, West Singhbhum, Chaibasa and the final decision has been taken after careful scrutiny and the relevant document by imposing minor punishment of censure and stoppage of four increments with non-cumulative effect.

4. Heard Mr. Prashant Pallav, learned counsel appearing for the petitioner and Mr. Ashish Kr. Shekhar, J.C. to G.P. VI, learned counsel appearing for the respondents at length and perused the records.

5. After hearing learned counsel for the respective parties at length and on perusal of the documents on records, the petitioner has been able to make out a case for interference due to the following facts and reasons:- (i) On perusal of the charge it appears that the charge no.1 pertains to violation of Rule 46 of the Chhotanagpur Tenancy Act, 1908 and the charge no.2 pertains to settlement of land to non-tribal people in favour of minor settlee basing on sale registered, 1963 in violation of rule 46 of the Chhotanagpur Tenancy Act. After the said charge, the petitioner while continuing as Circle Officer, Sadar Chaibasa committed the said irregularities in exercise of his quasi-judicial function. So far as violation of Section 46 of the Chhotanagpur Tenancy Act, 1908 in mutation cases, Rule-46 of the said Act deals with restrictions on transfer of their right by raiyat. But, as per the law of mutation order passed in mutation cases are amenable to appeal and the order passed in mutation cases neither creates right over the land nor extinguishes the same. Therefore, the same cannot be construed to be passed over the land in violation of rule 46 of the Chhotanagpur Tenancy Act, 1908. Therefore, the charge against the petitioner is misconceived so far as charge 7 no.2 against the petitioner is

concerned relating to settlement of land in favour of a non-tribal minor settlee, the same has been passed basing on the registered sale deed of the year 1963 and the charge was that the petitioner approved mutation of the tribal land in favour of the non-tribal people in violation of rule 46. But whatever power has been exercised by the petitioner in quasi-judicial capacity, the said order passed in mutation cases was amenable in appeal. Moreover, the mutation order passed basing on the possession and the mutation by itself is not document to show right title and interest. (ii) Although the punishment inflicted on the petitioner i.e. censure and stoppage of four increments are minor punishment but Rule-55-A, it is evident that in a case where penalties specified in clause (i) (ii) or (iv) of Rule 49 there may be imposed no regular department proceeding is to be initiated but there cannot be any doubt that departmental penalty can be imposed only upon framing of charges, upon giving an adequate opportunity of making any representation to the delinquent officer and upon taking into consideration the materials on record, such a penalty can be imposed only for good and sufficient reasons. Therefore, it is quite clear that such a penalty can be imposed only when the disciplinary authority framed definite charges against the delinquent officer and gives an opportunity making an effective representation. (iii) In the instant case, after acceptance of the explanation by the Deputy Commissioner, West Singhbhum, Chaibasa, there was no occasion on the part of respondent no.2 to differ with the opinion of the Deputy Commissioner. However, no show cause was issued prior to imposition of punishment which has prevented the petitioner to make an effective representation as envisaged under Rule 55-A of Civil Services (C. C. & A) Rules.

6. On the cumulative effect of facts and reasons stated in the foregoing paragraphs, the impugned order of punishment dated 20.02.2013 being not legally sustainable is, hereby, quashed and set aside.

7. With the aforesaid observations and directions, the writ petition stands allowed. (Pramath Patnaik, J.) RKM/- N.A.F.R.

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