

Brij Kumar Vs. State of Jharkhand and Ors

Brij Kumar Vs. State of Jharkhand and Ors

SooperKanoon Citation : sooperkanoon.com/76908

Court : Jharkhand

Decided On : Sep-16-2016

Appellant : Brij Kumar

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 3679 of 2010
Brij Kumar son of late Hari Narayan, Resident of Radhey Govind Street,
Tharpakana, P.O. Lower Bazar, District-Ranchi. Petitioner Versus 1. The State
of Jharkhand 2. The Commissioner cum Secretary, Department of Commercial
Taxes, Jharkhand, Project Bhawan, P.O. & P.S. Dhurwa, District-Ranchi.

3. The Accountant General, Jharkhand, Ranchi, P.O. & P.S. Doranda, District-
Ranchi. ... Respondents --- CORAM : HON'BLE MR. JUSTICE PRAMATH
PATNAIK --- For the Petitioner : M/s Rajendra Krishna & Amit Sinha , Advocates
For the Respondents : M/s Richa Sanchita, S.C. V, Anoop Kr. Agrawal & Pinky
Shaw, J.C to S.C V ----- CAV on 04.05.2016 Pronounced on 16/09/ 2016 Per
Pramath Patnaik, J.

In the accompanied writ application, the petitioner has inter-alia prayed for
quashing the notification no.157 dated 12.01.2010 (Annexure-15) pertaining to
imposition of punishment for deduction of 50% pension every month from the total
pension of the petitioner till the loss incurred to the department to the extent of
Rs.14,63,825.46/- is being repaid and for direction upon the respondents to

release 100% pension. The petitioner has further prayed for issuance of writ of certiorari for quashing the second show cause issued to the petitioner vide letter no.1513 dated 23.06.2009 (Annexure-14) and for quashing the letter no.557 dated 04.02.2010 (Annexure-16) by which the petitioner has been further communicated that he will not be paid anything other than the subsistence allowances during the period of suspension and the said period of suspension shall not be counted for the pension that means there is break in continuation of the service of the petitioner and for direction to respondents to treat the period of suspension as 2 duty period for the purpose of pensionary benefits and also to pay forthwith the salary other than the subsistence allowances for which the petitioner was under suspension and for quashing the enquiry report dated 28.07.1999 (Annexure-12).

2. The brief facts as disclosed in the writ application, is that the petitioner was selected for Bihar Finance Service in the year 1979 and was promoted on the post of Assistant Commissioner Commercial Tax in the year 1988. In May, 1993 the petitioner assumed the charge of Circle In-charge of Singhbhum at Jamshedpur temporarily. In the year 1993, the Eastern Spinning Mills which deals in staple yarn requested the issuance of form 'F' as per the requirement. 142 leaves of form 'F' was ordered by the petitioner to be issued. Thereafter, on 05.10.1993, an application was filed on behalf of Eastern Spinning Mills that ICO forms issued by the circle have been lost between Hawrah Station to Barast. The Sl. No. of lost form was 348901 to 348000. On receipt of aforesaid application the petitioner made an endorsement on 05.10.1993 to the effect that the same he put up with folder of the dealer concerned. The petitioner also directed the dealer to file/institute a case in the police station regarding the loss of form 'F' and the copy of the FIR be made available in the office. Thereafter, dealer submitted the information before the office of the petitioner. It has recorded in the order sheet by the petitioner dated 05.10.1993, 08.10.1993 & 09.07.1996. The petitioner also mentioned therein that step for cancellation of those forms is necessary. The petitioner ceased to hold the post on 07.12.1993 because some officer of senior rank assumed the office of the Circle In-Charge. An FIR bearing Bistupur P.S. Case No.130/1996, corresponding to G.R. Case No.1735/1996 has been lodged by the Deputy Commissioner, Urban Circle, 3 Jamshedpur on 08.06.1996 against one Metadin Nagalia and other in regard to the misusing of lost 'F' Form for the

purpose of evading tax. The petitioner who was officiating as Circle In-charge ordered on 09.07.1996 that a letter to the Commissioner Commercial Taxes, Patna for cancellation of 100 lost form 'F' and the petitioner directed the dealer to furnish the Indemnity Bond of Rs.5 lakhs. The Commissioner finally intimated the Circle In-Charge that the Indemnity Bond should be taken of Rs.1 crore instead of 5 lakhs. The dealer filed a writ petition bearing C.W.J.C No.2891/1996 (R) challenging the order of the Commissioner in execution of Indemnity Bond Rs.1 crore and this Court directed the Commissioner, Commercial Taxes to take a final decision in the matter till then the Indemnity Bond of Rs.1 crore were kept alive. Thereafter, a complaint case bearing complaint case no.419/1996 and the Court of Chief Judicial Magistrate, Jamshedpur against one Mr. Sri Niwas Sharma under section 408, 418 and 469 of the Indian Penal Code. Later on, the petitioner was added as an accused in the same complaint case. On 28.06.1997, the Dy. Commissioner, asked the petitioner to given explanation and the petitioner submitted the explanation on 14.07.1997. But to the utter surprise, FIR bearing Jugalsalai P.S. Case No.126 of 1997, corresponding to G.R. Case no.1597/1997 was instituted by Assistant Commissioner In- Charge, Singhbhum Circle Jamshedpur on 01.09.1997 against the petitioner and the dealer concerned and person who misused 8 forms namely Ambika Trading under section 420/120 B of the Indian Penal Code read with section 49(2) (A) (F), 49(3) (C) of the Bihar Finance Act, 1981. On receipt of the explanation, the department recommended for minor punishment of censor and stoppage of increment which was accepted by Departmental Minister as well as the Chief Secretary. The petitioner thereafter, placed under suspension 4 on 06.04.1999 under Rule 49 (a) of the Civil Services (Classification, control and appeal) Rules, 1930. Being aggrieved by the order of suspension, petitioner filed writ petition bearing C.W.J.C. No.1020/1999(R) and this Court directed on 19.04.1999 that departmental proceeding against the petitioner must be concluded failing which the order of suspension shall stand revoked. A departmental proceeding was initiated against the petitioner on 11.05.1999 and the conducting officer was appointed and the petitioner submitted his written statement and the conducting officer recorded his finding in respect of all charges holding the petitioner guilty of charges as per Annexure-12 to the writ application. On basis of the report of the inquiry officer, a second show cause

notice was issued to the petitioner against the proposed punishment of dismissal from services on 14.09.1999. Being aggrieved the petitioner filed C.W.J.C No.10381/1999 challenging the issuance of second show cause notice. Before passing the order of punishment the concurrence of the Bihar Public Service Commission (BPSC) was to be obtained and the Bihar Public Service Commission did not agree with the proposed punishment of dismissal from services and at the same time suggested to reconsider the case of the petitioner and inflict minimum punishment vide letter dated 12.02.2002. After reorganization of the erstwhile State of Bihar, all the files relating to the petitioner was sent to the State of Jharkhand and the petitioner became the employee of the State of Jharkhand. The Commercial Taxes Department again sent the proposal of awarding punishment of dismissal to the petitioner to J.P.S.C Ranchi for its concurrence. The J.P.S.C in tune vide letter dated 02.11.2004, obtained no charge against the petitioner and did not agree with the proposed punishment. No action was taken due to the communication made by the J.P.S.C. In the 5 meantime, the petitioner retired from services on attaining the age of superannuation on 31.03.2007. After retirement petitioner preferred a writ application bearing W.P.(S) No.6735/2007 for payment of retiral benefits. During the pendency of the writ application, the petitioner has been acquitted in the complaint case no.419/1996 vide order dated 12.06.2009 passed by 1st Class Judicial Magistrate, Jamshedpur. After retirement, the petitioner has been issued a show cause notice dated 23.06.2009, under the provision of 43(b) of the Pension Rules, with regard to adjustment of the final loss, caused by the petitioner to the Government exchequer to the tune of Rs.14,63,825.46/-. The petitioner submitted his reply to the show cause notice thereafter, the order of punishment forfeiting of 50% of pension has been passed by the notification dated 12.01.2010 and vide letter dated 04.02.2010 the respondents took a decision that the petitioner cannot be paid anything other than the subsistence allowance during the period of suspension. Being aggrieved by the impugned order of punishment vide Annexures 15 and 16, the petitioner left with no other alternative efficacious and speedy remedy, has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Learned counsel for the petitioner has vehemently submitted that on perusal of the letter dated 12.02.2002 Annexure S/4 and letter dated 02.11.2004 Annexure S/5 of the Bihar Public Service Commission and Jharkhand Public Service Commission of this supplementary affidavit filed by the petitioner dated 12.03.2014 it would be crystal clear that the proposal for infliction of punishment of dismissal from services did not find favour with the Jharkhand Public Service Commission. Further learned counsel for the petitioner by referring to the supplementary affidavit dated 28.07.2015 has submitted that the alleged loss of F-Form which has been in the possession of the representative of the dealer and due to any mis-utilization of those F-Forms causing loss to the Government to the tune of Rs.14,63,825.46/- cannot be recovered from the petitioner as per Section 12(9) of the Central Sales Tax (Registration and Turn Over Rules). There is specific provision in case of loss of F-Forms when the same was in the custody of the dealer if any loss caused to the government revenue, in that case the dealer shall be personally liable for the loss to the Government revenue, in the light of the specific provision contained in Clause 8 and 9-C of the CST (Bihar) Rule, the amount ascertained by the respondent authorities towards the loss to the government revenue cannot be recovered from the petitioner rather as the provision, the same is recoverable from the dealer himself. Learned counsel for the petitioner further submits that the impugned order dated 12.01.2010 Annexure-15 basing on subsequent charge without holding any inquiry to that effect is not legally sustainable. Learned counsel for the petitioner further submits that the second show cause notice dealt with additional charge of quantified loss. But no opportunity was afforded to the petitioner to revert the said additional charges. Moreover, in the absence of any charge for inflicting loss to the exchequer for public money the petitioner on the basis of alleged quantified loss said to have caused on the basis of unfounded allegations and which has been added after conclusion of the inquiry cannot stand to the scrutiny of judicial propriety. Learned counsel further submits that the action of the respondents is in violation of Article 14 and Rule 55A of Civil Service Classification of Control and Appeal Rules. 7 4. Learned counsel for the State-J.C to S.C. V has reiterated the averments made in the counter-affidavit. Learned counsel for the State has submitted that on enquiry by CID, it has been revealed that no FIR was lodged with Barasat Police and

letters as contained are only to cover up with the connivance of the petitioner. The petitioner never took any effective step in 1993 for lodging FIR with local police and for informing the higher officers of the department regarding loss of 100 number of Form 'F' and for their cancellation and said form misused by M/s Ambika Trading, Bistupur, Jamshedpur for importing Vanaspati from Nagpur, valued at Rs.1,31,88,805/- which caused evasion of sales tax to the tune of Rs.14,63,825.46/-. Thereafter, an FIR was lodged being Bistupur P.S. Case no.130/96 against the partner of M/s Ambika Trading.

5. The supplementary counter-affidavit dated 13.04.2016 has been filed on behalf of the respondents-State wherein, it has been submitted that due to the dereliction of duty on the part of the petitioner, there has been loss caused to the State exchequer. The imposition of suitable punishment was being considered. It was found that the petitioner is due to retire on 31.03.2007 as such imposing any punishment of withholding promotion or downgrading in scale of pay would have served no purpose. The department after approval of the then Deputy Chief (Departmental) Minister vide memo dated 03.04.2007 directed the JCCT (Admn.), Jamshedpur Division, Jamshedpur to assess the loss of revenue and accordingly loss was assessed to the tune of Rs.14,63,825.46/- as per Annexure-B to the supplementary counter-affidavit. Thereafter, observing the procedural requirements and after obtaining the approval of the State Cabinet, vide notification dated 12.01.2010 the punishment has been imposed upon the petitioner. 8 6. After hearing learned counsel for the respective parties at length and on perusal of the evidences on records, I am of the considered view that the petitioner has been able to make out a case for interference due to the following facts and reasons stated hereinbelow:- (I) From the factual matrix, it is quite apparent that Form 'F' was lost which was allegedly issued by the petitioner to the dealer. According to the provisions in case of lose of F-Forms, the dealer will be personally responsible. There is elaborate provision Rule 9-C of the Central Sales Tax (Bihar) Rules to deal with such a situation. For better appreciation, it would be apposite to refer Rule 9-C of the Central Sales Tax (Bihar) Rules and Clause 8 held as under:- (8) Every form of declaration obtained from the Assistant Commissioner, Superintendent or Assistant Superintendent by a registered dealer shall be kept by him in a safe custody and the latter shall be personally

responsible for the loss, destruction or theft of any such form or the loss of Government revenue, if any, resulting directly or indirectly from such loss, destruction or theft. From the aforesaid provision it is crystal clear that any loss caused to the Government revenue is recoverable from dealer himself therefore, the petitioner was not liable to indemnify the alleged loss caused to the Government. (II) In the instant case, the perusal of the records indicates that the charges framed against the petitioner in the year 1999, the opinion of the Bihar Public Service Commission was sought for imposition of major punishment of dismissal from services and Bihar Public Service Commission vide letter 9 dated 12.02.2002 did not agree with the proposed punishment of dismissal from services. After reorganization of the erstwhile State of Bihar again the view of Jharkhand Public Service Commission was sought for and Jharkhand Public Service Commission vide letter dated 02.11.2004 did not agree with infliction of major punishment. However, for the reason best known to the respondents, no decision was taken for imposition of any punishment during the continuance of the petitioner in services till his retirement i.e. on 31.03.2007. However, after retirement from services basing on an additional charge of forfeited loss, second show cause notice was issued to the petitioner and the loss was forfeited to be Rs. 14,63,825.46/- and notice was issued under Section 43(b) of Bihar Pension Rule. Since second show cause notice dated 23.06.2009 deal with additional charge of quantified loss which was not found out in the inquiry report, the same could not have been passed for infliction of punishment of forfeiture of 50% of the pension. Assuming there has been dereliction on the part of the petitioner but since in view of the specific provision under the Central Sale Tax that any loss to the Government revenue by loss of Form 'F' can be indemnified by the dealer himself, the petitioner could not have been inflicted with punishment of forfeiture 50% pension. In the facts and circumstances of the case appears to be shockingly disproportionate harsh to the alleged misconduct committed by the petitioner.

7. On the cumulative effect of the aforesaid reasons, the impugned order of punishment dated 12.01.2010 vide Annexure-15 and 04.02.2010 vide Annexure-16 is hereby quashed and set aside and the matter is remitted back to the respondents to consider the case of the petitioner afresh on the quantum of punishment in accordance with law within a period of 12 weeks from the receipt of

the copy of the order. 10 With the aforesaid direction, the writ petition stands allowed. (Pramath Patnaik, J.) RKM/- N.A.F.R.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com