Jasodhar Misra vs State Of Bihar And Ors. on 11 January, 1979

Equivalent citations: AIR1979SC1117, 1979LABLC824, (1979)ILLJ262SC, (1979)4SCC322, 1979(11)UJ214(SC), AIR 1979 SUPREME COURT 1117, 1979 LAB IC 824, (1979) 1 LAB LN 347, (1979) BLJ 256, (1979) 1 LABLJ 262, 1979 UJ(SC) 214, (1979) SERVLR 637, 1979 SCC (L&S) 360, 1979 (4) SCC 322

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Bench: Y.V. Chandrachud, A.P. Sen, V.D. Tulzapurkar

JUDGMENT

Y.V. Chandrachud, C.J.

1. The appellant was appointed as a Kanungo in 1947 and was confirmed in that post in 1949. In June, 1952 while he was working in Supaul Sub-division he was placed under suspension on the basis of certain allegations of corruption made against him by one Abdul Aziz. The appellant and one Baldeo Prasad who was working as a Khas Mahal Tehsildar were prosecuted in special case No. 9 of 1954 but by his judgment dated February 17, 1955, the learned Special Judge, Bhagalpur, acquitted them on the ground that the charges of corruption were not established on the evidence led in the case.

2. In September 1956 a departmental proceeding was instituted against the appellant under the orders passed by the Commissioner of Bhagalpur on three different charges. The first charge related to the making of certain interpolations and mutilations of certain entries in official documents. The second charge with which we are principally concerned in this appeal reads thus:

> That you in the capacity of a Kanungo made improper recommendations for settlement of Khas Mahal lands of holding Nos. 158, 159, 161 and 163 in favour of Jagdish Jha of Balha, Abhimanu Jha of Parsa, Raghunandan Prasad of Bhimpur and Janardhan Thakur of Balha, respectively in the Rent Roll of 1949-50.

3. The Commissioner directed the District Magistrate, Saharsa to hold a departmental enquiry and submit the report. The District Magistrate, however, forwarded the papers to the Addl. District Magistrate for holding the departmental enquiry. Several documents were produced and several witnesses were examined before the Additional District Magistrate who by his report dated May 25, 1961 held that the appellant was entitled to benefit of doubt in respect of charge No. 1, that charge No. 3 was not proved but that charge No. 2 was fully proved. The Addl. District Magistrate recommended that the petitioner may be left off with an order of censure since it did not appear that his action was malafide.

4. The Commissioner appears to have entertained doubt regarding the regularity of the departmental enquiry held by the District Magistrate since he, on his own part, had directed the District Magistrate himself to hold the enquiry. He, therefore, directed the Collector once again to take fresh proceedings. When the appellant was informed of this, he gave a statement is writing that he waived his right for a de nove enquiry and prayed that a decision should be arrived at on the basis of the evidence which was already recorded by the Addl. District Magistrate.

5. While forwarding the report of the enquiry officer to the Commissioner, the Collector disagreed with the Addl. District Magistrate and held that all the three charges were proved. By an order dated November 20, 1961 the Commissioner held that charges 1 & 2 were established and stating that he was tentatively of the view that the appellant should be dismissed from service, he issued a notice to the appellant asking him to show cause why he should not be dismissed from service. The Commissioner asked the appellant to submit his explanation through the Addl. District Magistrate, Shaharsa, and intimated to him that the latter would transmit the representation of the appellant with his own comments through the Collector, who also would offer his comments on the representation. The appellant showed cause against the proposed punishment whereupon further comments were made by the Addl. Collector the Collector on the appellant's representation. The Addl. Collector changed his original view and by his recommendation dated February 8, 1962 stated that all the three charges were fully established and that the conduct of the petitioner was malafide which would justify the punishment of dismissal from service. On March 6, 1962 the Commissioner passed on order dismissing the appellant from service.

6. The appellant then filed an appeal to the Board of Revenue which was heard by an Addl. Member of that Board. By this judgment dated September 12, 1963 the learned Member observed that the main charge in the case was charge No. 2 and that the evidence conclusively established that charge.Being aggrieved by the order passed by the Board of Revenue the appellant fields a Writ Petition under Article 226 of the Constitution in the Patna High Court which was dismissed by a Division Bench by its judgment dated March 25, 1966. The High Court was, however, granted a certificate to the appellant under Article 133(1)(a) of the Constitution to file an appeal to this Court.

7. Paragraph 3 of the High Court's judgment sets out six questions which were raised by the appellant before the High Court Mr. Ramamurthy appearing on behalf of the appellant has stated very fairly that he would not press points Nos. 1, 2 & 6 and would restrict his contentions to points 3, 4 & 5 only.

8. The first of these points which was point No. 3 before the High Court is that the Commissioner's order of dismissal was influenced by the further comments which were made by the Addl. Collector and the Collector and since these comments were taken into consideration by the Commissioner behind the back of the appellant, opportunity was denied to the appellant to meet these comments which has resulted in violation of the principles of natural justice. It seems to us impossible to accept this contention. When the Commissioner issued the show cause notice to the appellant as regards the proposed punishment, he had by his order of even date informed the appellant that the representation should be submitted to the Addl. Collector, that theAddl. Collector would forward the representation with his own comments to the Collector and that the Collector in turn will forward

the representation with his own comments to the Commissioner. The appellant thus knew when he made his representation to the Commissioner against the proposed punishment that the Addl. Collector and the Collector will, as directed by the Commissioner, offer their comments on his representation. In spite of this, the appellant did not ask the Commissioner to disclose to him as to what comments were made by the Addl. Collector and the Collector on his representation. Apart from the fact that the appellant did not ask for any opportunity to meet the comments made by the two officers, it is important to bear in mind that the comments made by the Addl. Collector and the Collector pertain solely to the representation made by the appellant as regards the pro posed punishment and did not refer to any new or undisclosed facts which were not on the record. The facts on which the Commissioner proposed that the particular order of punishment be passed were taken on the record in the presence of the appellant and he was afforded full and effective opportunity to meet each piece of the evidence which was adduced in the case. The Commissioner had already recorded a finding that all the charges leveled against the appellant were established on the evidence led in the case, that he had formed the opinion that charges 1 & 2 were tentatively proved and that he proposed to impose the punishment of dismissal in respect of those charges. In view of this position we are unable to accept the contention of the appellant that there has been any violation of the principles of natural justice.

9. We would also like to add that when the appellant's appeal was heard by the Board of Revenue the entire record, including the comments made by the Addl. Collector and the Collector was available to the appellant and he could have made his contentions which he desired in regard thereto. He did not make any grievance that he was prejudiced because copies of the documents were not supplied to him.

10. There is equally no substance in points 4 & 5 which were argued before the High Court. Point No. 5 is to the effect that the finding in respect of charge No. 2 was based on no evidence. We do not understand this contention since there is clear evidence in the case to show that persons in whose favour lands were settled were not in possession thereof at any time as tenants and, in fact, those persons did not even belong to the village. The contention of the appellant in the enquiry was that he acted mechanically on the report which was submitted to him by his subordinate officers and that it was no part of his duty to satisfy himself whether the report was justified. This contention of the appellant runs counter to Rule 145 of the Board's Miscellaneous Rules which says in so far as is relevant that 'Kanungos are executive revenue officers who are expected to pass the greater part of their time in the Muffasil on outdoor work'. As observed by the High Court, a Kanungo who forwards his report regarding the abatement of rent and settlement of lands with new tenants cannot, consistently with the rules, be permitted to take a plea that his responsibility is only of a ministerial kind and that he is merely a forwarding agency. We are satisfied that it was the appellant's duty to pay visit to the locality in which the lands were situated and to satisfy himself whether the report in regard to the settlement of lands was made in accordance with the rules. It is undeniable that the settlement was made with persons who did not belong to the village and who were not tenants of the lands.

11. The last contention of Mr. Ramamurthy is that certain valuable documents which would have enabled the appellant to establish his innocence were withheld from him during the enquiry. It is

true that certain documents were found missing but the evidence on the basis of which charge No. 2, which is the principal charge, has been held to have been established is the report of the Sub Divisional Magistrate, Shri Tudu, and the evidence of the Khas Mahal Tahsildar whose earlier report Ext. 2 was on the record of the case. The two reports were taken on the record in the presence of the appellant and he was accorded full opportunity to meet these reports. The appellant did not, at any stage, take the plea that he had actually visited the site and had satisfied himself that the report made by the officers was correct. Were he to take any such plea it might have become relevant that certain important papers were withheld from him. The appellant's limited contention was that the primary responsibility for making the recommendation was that of the Khas Mahal Tehsildar, that his own function was purely of a ministerial nature and that no order for the settlement of lands was made independently by him. As we have stated earlier it is impossible, in view of the rules governing the matter, to accept this contention.

12. For these reasons we confirm the judgment of the High Court and dismiss this appeal. There will be no order as to costs.