

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (S) No. 7033 of 2017

Anant Prasad Singh, Son of Sri Hardeo Pd. Singh Petitioner
Versus

- 1.The State of Jharkhand
 2.The Principal Secretary, Department of Drinking Water and Sanitation, Government of Jharkhand.
 3.The Deputy Secretary, Department of Drinking Water and Sanitation, Govt. of Jharkhand. Respondents
-

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

- For the Petitioner : Ms. Aprajita Bhardwaj, Advocate
 : Mr. Abhishek Abhi, Advocate
 For the State : Mr. Prabhat Kumar, S.C-II
 : Mr. Shivam Singh, A.C to S.C-II
-

Oral Judgment in Court

12/Dated:19th February, 2024

Heard Ms. Aprajita Bhardwaj, learned counsel for the petitioner and Mr. Prabhat Kumar, learned S.C-II for the respondent-State.

2. This writ petition has been filed on behalf of the petitioner for quashing the order dated 22.09.2017 (Annexure-6) issued by the Deputy Secretary, by which it has been communicated that the petitioner has been reverted from the post of Executive Engineer to the post of Assistant Engineer and further direction has been made for recovery of Rs.8.84 lakhs with 12% interest from the salary of the petitioner and for grant of any other ancillary reliefs.

3. Learned counsel for the petitioner has submitted that the impugned order dated 22.09.2017 as contained in Annexure-6 is illegal, arbitrary and not sustainable in the eye of law. It is

submitted that the petitioner has done the entire works after the approval of the Superintending Engineer yet he has been victimized by the department. It is submitted that the Article of Charges were not approved by the competent authority. It is further submitted that even the order dated 22.09.2027 issued under the signature of Deputy Secretary by which the petitioner has been reverted to the post of Assistant Engineer and the recovery has been made which is illegal and without jurisdiction as the same has been passed without examining any witnesses during the entire departmental proceeding.

4. Learned counsel for the petitioner in support of his submission has placed reliance upon the judgment of a Co-ordinate Bench of this Court passed in ***W.P.(S) No.4795 of 2019*** on 14.07.2022, order dated 21.11.2023 passed in ***L.P.A No.481 of 2022*** by the Division Bench of this Court and the judgments reported in ***2022 SCC OnLine Jhar 1485*** (Brahmanand Pandey vs. State of Jharkhand and Ors.) and ***(2009) 2 SCC 570*** (Roop Singh Negi vs. Punjab National Bank and Others).

5. It is submitted that till date even the salary of the petitioner has not been paid after the order passed by the disciplinary authority in the departmental proceeding and as such the petitioner is facing grave hardship and hence the impugned order may be quashed and this writ petition may be allowed.

6. Mr. Prabhat Kumar, learned S.C-II has submitted that this writ petition is not maintainable as the petitioner has not filed necessary appeal under Rule-25(II) of Jharkhand Government Employees (Classification, Control and Appeal) Rule, 2016. It is further submitted that the petitioner has committed serious lapses and has caused huge loss to the department and has get

work completed. It is further submitted that the petitioner has violated Rule 158(a), 158(c)of the P.W.D Code and also Rule 206 of Jharkhand Finance Rule and thus no illegality has been committed by the disciplinary authority while passing the order of punishment against this petitioner.

7. On going through the records of this case, this Court is of the view that this writ petition can be disposed of on the question of non-examination of the witnesses for the present.

8. So far as the competency of the authority for approving of Article of Charges is concerned, the same is not required to be seen at this stage. However, the present case can be disposed of on the ground of non-examination of any witnesses in the departmental proceeding.

9. It has been held in the case of ***Roop Singh Negi vs. Punjab National Bank and Ors.*** reported in **(2009) 2 SCC 570** at paragraph-14 and 15 as follows:-

“Para-14:- Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

Para-15:- We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the

appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

10. This Court finds that the filing of appeal is not required at this stage as the authorities have violated the principles of natural justice and has acted contrary to the judgment passed in the case of ***Roop Singh Negi vs. Punjab National Bank and Ors.*** reported in ***(2009) 2 SCC 570.***

11. It is well settled in the light of the judgment rendered in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks Mumbai*** reported in ***1998 8 SCC 1*** that alternative remedy is no bar in filing of the writ petition and therefore, even if the petitioner has not filed the statutory appeal before the department concerned, the same does not preclude the right of the petitioner for moving before this Court.

12. Under the circumstance, the order dated 22.09.2017 issued by the Deputy Secretary to the Government is set aside.

13. However, the respondents are directed to start fresh departmental proceeding initiated against the petitioner at the stage of framing of charges and it will be desirable that the department concerned may examine the witnesses after furnishing the list of the witnesses and the list of documents to the petitioner during the pendency of the departmental proceeding.

14. It is expected that the departmental proceeding may be concluded within a reasonable period and the petitioner is directed to co-operate with the Enquiry Officer.

15. Thus, this writ petition is allowed and disposed of with the direction made above.

(Sanjay Prasad, J.)

Saket/-

NAFR