

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12019 of 2015

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Braj Shankar Prasad Sinha son of Late Chaturbhuja Prasad, resident of 103,
New Yarpur, P.s. Gardanibagh, District Patna.

.... Petitioner/s

Versus

- 1.The State of Bihar.
- 2.The Principal Secretary, General Administration Department, Government of Bihar, Patna.
- 3.The Additional Secretary, General Administration Department, Government of Bihar, Patna.
- 4.The Deputy Secretary, General Administration Department, Government of Bihar, Patna.
- 5.The Joint Secretary, General Administration Department, Government of Bihar, Patna.
- 6.The State of Jharkhand through Principal Secretary, Personnel Administration and Rajbhasa Department, Government of Jharkhand, Ranchi.
- 7.The Deputy Secretary, Personnel Administration and Rajbhasa Department, Government of Jharkhand, Ranchi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar, Adv
For the State of Bihar : Mr. Utsav Kumar AC to GA-11.
For the State of Jharkhand : Mr. Dhruv Mukherjee, Sr. Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
(Date- 06.08.2015)

Heard learned counsel for the parties.

2. At the outset Mr. Dhruv Mukherjee, learned senior counsel appearing for the State of Jharkhand has raised a preliminary objection as with regard to maintainability of this writ application before this Court. In this regard, he has submitted that both the impugned orders dated 13.11.2014 inflicting punishment of withholding 5 per cent pension as also affirming the



appellate order dated 10.06.2015 asserted in this writ application have been passed by the State of Jharkhand because the petitioner was not only an officer of the Jharkhand Government but even at the time of his retirement on 31.01.2014, he was also posted within the territorial jurisdiction of the State of Jharkhand. According to him, each and every part of the cause of action for the relief sought in this writ application having arisen at Ranchi in the State of Jharkhand, this writ application before the Patna High Court is not maintainable.

3. Learned counsel for the petitioner on the other hand has submitted that the petitioner was earlier an officer of the State Government of Bihar and thus when his earlier writ petition was decided by this Court and the appeal arising out of the order of the learned single judge was also interfered by order dated 05.05.2011 passed in L.P.A No. 168 of 2011, and the order even by the State of Jharkhand could be very well assailed by the petitioner before this Court specially when the



observation was also made in this regard, in the order dated 13.01.2015, passed in contempt application filed by the petitioner being M.J.C No. 2145 of 2014 arising out of the order dated 05.05.2011 passed in L.P.A No. 108 of 2011, this writ petition would be maintainable before this Court.

4. In the considered opinion of this Court, such submission of learned counsel for the petitioner cannot be accepted for more than one reason. The petitioner was posted as a Block Development Officer (B.D.O) at Ratu in Ranchi and was subjected to a departmental proceeding on the basis of memo of charge framed by the Deputy Commissioner, Ranchi vide his letter No. 250 dated 27.04.1995. The departmental proceeding, however, had remained pending and the petitioner had filed a writ petition before this Court in C.W.J.C No. 1317 of 1999 and this Court by order dated 06.05.1999 had disposed of the same by directing the Deputy Commissioner, Ranchi to complete the departmental proceeding within a period of six weeks. Thereafter the



suspension of the petitioner was revoked on 23.07.1999 and he was also inflicted punishment by order dated 26.07.1999, in the form of censure. The petitioner did not challenge this order dated 26.07.1999, for next seven years and came to this Court by filing writ petition in the year 2006 by C.W.J.C No. 1125 of 2006, which was dismissed by learned single judge on 01.10.2010. It was the appeal thereafter filed by the petitioner before this Court being L.P.A No. 168 of 2011, which was disposed of on 05.05.2011 by holding that the order of punishment of the petitioner dated 23.07.1999 was not sustainable because a regular departmental proceeding had not been conducted.

5. It has to be kept in mind that from 15.11.2000, the petitioner became the officer of the State of Jharkhand as the services were placed in the State of Jharkhand and therefore, even when the appeal was allowed, this Court by taking into account that the petitioner was an employee of the State of Jharkhand, in its order dated 05.05.2011 while setting aside the order

of punishment dated 26.07.1999 had held as follows:-

“On hearing the parties we are satisfied that the order of punishment contained in Annexure 4 to the writ petition dated 26.7.1999 has been passed without due regard to the procedure to be followed in a proceeding initiated for award of major punishment. Hence we have no option but to quash the order of punishment imposing censure against the petitioner / appellant.

The law is well settled that if the disciplinary authority decides to impose only a minor punishment, it can follow the prescribed procedure of show cause notice and decide the charge on the basis of show cause submitted by the proceedee. However, once the authorities opt for a full-fledged departmental proceeding meant for award of major punishment, they must conduct such proceeding as per relevant rules and there must be an inquiry report based upon materials brought on record in course of the inquiry proceeding after giving opportunity of defence to the proceedee.

Considering the nature of the charge, we grant liberty to the competent authority to decide afresh whether appellant should be subjected to any proceeding or not and if yes, whether for major punishment or minor punishment. If the competent authority opts for further proceeding against the appellant, it should be concluded without any delay and in accordance with law at an early date preferably within nine months from the date of production / communication of this order before the competent authority. It is not in dispute that on account of bifurcation of erstwhile State of Bihar w.e.f. 15.11.2000, the service of the appellant has been allocated to the newly created State of Jharkhand and hence his disciplinary proceeding is the competent authority in the State of Jharkhand. Learned counsel for the State of Jharkhand has expressed the same view that the proceeding against the appellant can proceed only in State of Jharkhand. Learned counsel for the State of Bihar has no objection and he has informed the Court that the relevant records have already been sent to Jharkhand but if any thing further is required, the same shall be made available without any delay.

The issue as to whether petitioner will be entitled for anything beyond the subsistence allowance for the period of suspension shall abide by the result of the proceeding or else it shall be decided by the competent authority as per law.”



6. Pursuant to the aforementioned order, it was the State Government of Jharkhand which had issued a notice to the petitioner on 2nd July, 2014, enclosing the memo of charge dated 27.04.1995 framed and issued by the Deputy Commissioner, Ranchi in his memo no. 250 dated 27.04.1995. As noted above the petitioner had stood retired from the Government of Jharkhand w.e.f. 31.01.2014 and therefore, proceeding in terms of Rule-43(b)/139 of Bihar Pension Rules also adopted by State of Jharkhand was not only initiated but completed by the State of Jharkhand which had passed the order of punishment of withholding 5 per cent of pension after finding the charges in the departmental proceeding dated 13.11.2014. The prayer of the petitioner salary for the period of suspension i.e. 27.08.1997 to 23.07.1999 beyond subsistence allowance was also rejected again by the order of the State of Jharkhand. His appeal also was rejected by the State of Jharkhand on 10.06.2015 affirming the order of withholding 5 per cent of pension.

7. Thus, it becomes absolutely clear that the



petitioner who has to receive pension from the State of Jharkhand on account of his being officer of the State of Jharkhand ever since 14.11.2000, and having been inflicted punishment of withholding 5 per cent of pension by the State of Jharkhand as also its affirmance in appeal by the State of Jharkhand, in the manner indicated above, and his each and every part of cause of action had only arisen in the State of Jharkhand specially when even misconduct committed by him was in relation to his posting as Block Development Officer, Ratu, Ranchi.

8. Merely, because the petitioner is receiving pension at Patna will not change the cause of action for the petitioner, arising out of the order of punishment passed by the State of Jharkhand at Ranchi. This Court is also not impressed with the submission of learned counsel for the petitioner that initially the order of punishment dated 26.11.1999 was of censure and was passed by the State of Bihar as a matter of fact on 26.11.1999 when the State of Jharkhand was not created and in fact which

came only into existence on 14.11.2000, in view of the provisions made in Bihar Reorganization Act, the order of punishment could have been passed only by the State of Bihar.

9. The overemphasized reliance on an order of this Court dated 13.01.2015, in contempt application filed by the petitioner being M.J.C No. 2145 of 2014 arising out of L.P.A No. 168 of 2011 is also wholly misplaced as would be evident from the reading of the aforesaid order of this Court dated 13.01.2015, which reads as follows:-

“Let the petitioner challenge the notice dated 2nd July 2014 and the final order dated 13.11.2014 before the appropriate Court in accordance with law.”

(underlining for emphasis)

10. Thus, the opportunity given by this Court to assail the notice dated 02.07.2014 and the final order dated 13.11.2014 passed by the State of Jharkhand before appropriate Court will never mean Patna High Court but only the Jharkhand High Court which has territorial jurisdiction in relation to each and every cause

of action of the petitioner.

11. Law in this regard has been well settled by a Division Bench of this Court in the case of **Amar Kumar Choubey vs the Union of India & Ors** reported in **2009 (1) PLJR 553** which has been followed by learned Single Judge in the case of **Uday Prasad Singh & Ors vs the Union of India**, reported in **2014(3) PLJR 3**.

12. Thus, for the reasons stated above, the preliminary objection raised by Mr. Mukherjee, learned senior counsel for the State of Jharkhand is upheld and this writ application is not held to be not maintainable before this Court and is accordingly dismissed.

13. Nothing said in this order however shall come in the way of the petitioner in approaching the competent Court, which will have the jurisdiction to examine the correctness of the two impugned orders passed by the State of Jharkhand.

(Mihir Kumar Jha, J)

N.A.F.R./Ranjan/-

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