IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 3096 of 2021

Jagdish Paswan …. Petitioner

Versus

1. The State of Jharkhand.
2. District Superintendent of Education, Ramgarh.

…. Respondents

WITH

W.P.(S) No. 5035 of 2021

Jagdish Paswan …. Petitioner

Versus

1. The State of Jharkhand through the Secretary/ Principal Secretary, School Education and Literacy Department, Ranchi.
2. Under Secretary to Government, School Education and Literacy Department, Ranchi.
3. The Director, Primary Education, School Education and Literacy Department, Ranchi.
4. Deputy Director-cum-Enquiry Officer, Primary Education, School Education and Literacy Department, Ranchi.

…. Respondents

CORAM : HON'BLE DR. JUSTICE S.N. PATHAK

For the Petitioner : Mr. Manoj Tandon, Advocate
Ms. Neha Bhardwaj, Advocate

For the Respondents : Mr. Nehru Mahto, AC to GP-I

***13/* 01.10.2024** Since questions of law and facts involved in both these writ petitions are same and similar, they are heard together and are being decided analogously.

2. Heard the learned counsel for the petitioner and learned counsel for the respondents.

Prayers

3. W.P.(S) No. 3096 of 2021 was filed by the petitioner for payment of pensionery benefits. W.P.(S) No. 5035 of 2021 was filed by the petitioner for quashing of the order contained in Memo No. 14/A.8-21/2019-1848 dated 06.12.2019, whereby the petitioner was terminated from service. In this writ petition, the petitioner has also challenged the appellate order contained in Memo No. 2293 dated 22.11.2021 by which the departmental appeal preferred against the penalty order dated 06.12.2019 has been rejected. The petitioner has also challenged the enquiry report dated 21.02.2019 whereby the enquiry

officer held the charges proved against the petitioner.

The Facts

4. Shorn of unnecessary details, the facts pleaded in these writ petitions are that the petitioner was appointed on 06.04.1991. A memo of charge was framed in Prapatra-'Ka' against the petitioner on 20.6.2016 alleging inter alia that while he was posted as Block Education Extension Officer, Bagodar, he withdrew a sum of Rs. 4,36,000/- and the amount could not be distributed in the schools and while handing over the charge to his successor, he did not hand over the aforesaid details of amount. It is further alleged that a complaint was made against the petitioner with respect to 5 bags of rice, as the petitioner has distributed only 35 bags of rice instead of 40 bags of rice. The third allegation against the petitioner is that there was a criminal case going on against him, being Vigilance P.S. Case No. 14 of 2016. These allegations were enquired into and the enquiry officer submitted the report on 21.02.2019 holding the charges proved. A second show cause notice was called for from the petitioner on 14.10.2019 which was replied by the petitioner on 21.10.2019. The penalty of termination from service was passed on 06.12.2019. The petitioner preferred departmental appeal there-against which came to be dismissed on 22.11.2021. The writ petition was thereafter preferred and in the meantime, the petitioner stood retired on 31.10.2022.

Arguments advanced by learned counsel for Petitioner

5. Mr. Manoj Tandon, learned counsel appearing for the petitioner while assailing the termination order submits that the very initiation of departmental proceeding was bad in the eyes of law for the simple reason that the same was proceeded under Rules 49 and 55 of the Civil Services (Classification, Control & Appeal) Rules, 1930 which stood repealed by coming into existence of Jharkhand Government Servant (Classification, Control & Appeal), 2016. Learned counsel submits that the very initiation of departmental proceeding, therefore, was non-application of mind by the authority. Referring to the enquiry report dated 21.02.2019, learned counsel submits that the enquiry officer has held the charges proved against the petitioner without examining even a single witness to support the charge. It is submitted that mere production of document may not be sufficient to prove charge against the petitioner unless the contents thereof is proved by a witness.

Admittedly, not a single witness was examined to prove the charge against the petitioner. Mr. Tandon further submits that on the basis of complaint against the petitioner, the charge against the petitioner was drawn. However, the fact remains that the complainant was not examined to support the allegation against the petitioner. It is further submitted that the departmental appeal was preferred on 31.07.2021 wherein altogether eight points were raised requesting the appellate authority to consider and set aside the termination order. However, the appellate authority has not dealt with any of such points. In this view of the matter, learned counsel submits that it is a case of no evidence.

6. To fortify his arguments, learned counsel places heavy reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Hardwari Lal Vs. State of U.P. & Ors.***, reported in **(1999) 8 SCC 582** to contend that without examining the complainant, the charge could not be proved. Reliance has also been placed on the judgment in the case of ***Roop Singh Negi Vs. Punjab National Bank & Ors***., reported in ***(2009) 2 SCC 570*** to fortify his argument that without examining the witnesses, the charge could not be proved and unless the charge is proved in accordance with law, no punishment can be inflicted upon the delinquent. Relying on these judgments, it is submitted by the learned counsel for the petitioner that the impugned orders are fit to be set aside, the petitioner is fit to be reinstated in service and a direction be given to the respondents to pay the pensionery benefits to the petitioner.

Arguments advanced by learned counsel for Respondents.

7. Mr. Nehru Mahto, learned counsel appearing for the respondents submits that the departmental proceeding was initiated against the petitioner and the enquiry officer held the charges to be proved. The petitioner was given ample opportunity to submit second show cause reply and thereafter the disciplinary authority has punished the petitioner. The petitioner has also preferred departmental appeal which has been dismissed and hence, no interference is called for by this Court in the writ petition. It is further stated in the counter affidavit that a first information report was lodged against the petitioner which was registered as Vigilance P.S. Case No. 14 of 2016 which followed the charge sheet dated 20.6.2016. It is pleaded in paragraph-11 of the counter affidavit itself that the amount said to be misappropriated was deposited by the petitioner after initiation of the departmental proceeding and

hence, there was admission on the part of the petitioner. It is further submitted that the petitioner was earlier punished with minor penalty of stoppage of three increments without cumulative effect by order contained in letter dated 26.06.2019, enclosed as Annexure-A to the counter affidavit. As such, learned counsel submits that the writ petitions are bereft of any merit and hence, the same may be dismissed.

FINDINGS OF THE COURT

8. This Court has considered the rival submissions of the learned counsel appearing for the parties and has come to the conclusion that the impugned orders are neither sustainable in law nor on facts for the following facts and reasons:-

(i) It is true that in a matter of departmental proceeding under the service law, the interference by a Writ Court under Article 226 of the Constitution is very limited. But it is equally true that even in a matter of departmental proceeding, some sort of evidence is required to be proved against the delinquent and proceeding has to be conducted in accordance with rules whereby departmental proceeding is governed.

(ii) The State of Jharkhand has framed Jharkhand Government Servant (Classification, Control & Appeal) Rules, 2016 in exercise of powers under the proviso to Article 309 of the Constitution of India. This Rule governs the field of the departmental proceeding against a Government servant and in fact, the punishment has been imposed upon the petitioner under Rule 17 thereof, which is mentioned in the impugned order of penalty dated 06.12.2019 itself. Rule 14 thereof prescribes the punishment. Removal from service is under Rule 14 (x), which is under the heading of Major Penalty. The procedure for imposing major penalty is stipulated under Rule 17 of the said Rules, 2016. Rule 17 (3) (ii) (a) prescribes that where it is proposed to hold an enquiry against the Government servant, the disciplinary authority shall draw up the substance of imputations and the statement of imputation of misconduct or misbehaviour in support of each article of charge shall contain a list of such witnesses by whom the article of charge are proposed to be sustained. It is a mandatory provisions to be complied with by the disciplinary authority.

(iii) In the present case, from perusal of the memo of charge, which is Annexure-1 to the writ petition, it does not appear that this mandatory provision has been followed, as no list of witness is given thereunder. This Rules came into effect on 15.4.2016 and the charge was framed against the petitioner on 20.6.2016. The mandatory provisions, therefore, were violated in initiation of the proceeding against the petitioner. Moreover, though the aforesaid Rule 2016 was invoked on the date of initiation of departmental proceeding on 20.6.2016, the respondents initiated the proceeding mentioning Rules 49 and 55 of the Civil Services (Classification, Control & Appeal) Rules, 1930 which stood repealed by the aforesaid Rules, 2016, in view of Rule 32 thereof, which is the repealed and saving clause. This shows complete non-application of mind by the disciplinary authority while initiating the departmental proceeding.

(iv) From perusal of the enquiry report dated 20.5.2019, it appears that merely by quoting charges, the enquiry officer came to the conclusion that the charges are proved. How the charges are proved has not at all been discussed in the enquiry report. Not a single witness is examined to prove the charge against the petitioner. In this context, in the case of ***Roop Singh Negi*** (*supra*), the Hon'ble Apex Court held in paragraph no. 14 which is as follows:-

> *"**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."*

(v) Admittedly, in the present case, mere documents were produced and no witness was examined. The charges could not said to be proved as mere production of document would not be sufficient to prove the

charge, unless the witness proves the contents thereof. It has been held in the case of ***State of Uttar Pradesh & Ors. Vs. Saroj Kumar Sinha**,* reported in **(2010) 2 SCC 772** that even the delinquent does not appear in the departmental proceeding, then also procedure for imposing penalty has to be followed, before imposing such major penalty. Mere production of document cannot be sufficient to prove the charge, unless it is supported by a witness. The relevant paragraph-28 of the said judgment is quoted herein below:-

> ***"28.** An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."*

(vi) The contention of the learned counsel for the petitioner that unless the complainant is examined, the charges cannot be said to be proved has some substance. It is well settled that without examining the complainant which is the basis of initiation of departmental proceeding causes serious defect in the departmental proceeding. Reference in this context may be made to the judgment in the case of ***Hardwari Lal*** (*supra*), in particular paragraphs- 3 to 5 thereof:-

> *"**3.** Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.*

4. However, Shri Goel, the learned Additional Advocate General, State of Uttar Pradesh has submitted that there was other material which was sufficient to come to the conclusion one way or the other and he has taken us through the same. But while appreciating the evidence on record the impact of the testimony of the complainant cannot be visualised. Similarly, the evidence of Jagdish Ram would also bear upon the state of inebriation, if any, of the appellant.
***5.** In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service. Considering the fact of a long lapse of time before the date of dismissal and reinstatement, and no blame can be put only on the door of the respondents, we think it appropriate to award 50 per cent of the back wages being payable to the appellant. We thus allow the appeal filed by the appellant. However, there shall be no order as to costs."*

(vii) It has also been rightly argued that if the departmental proceeding is initiated by framing of charge, it must contain the list of witnesses, which is the requirement of law. This point has also been dealt with by the Hon'ble Apex Court in the case of ***Union of India & Ors. Vs. B.V. Gopinath***, reported in **(2014) 1 SCC 351**, as per which, giving the list of witnesses with the name of charge itself is a requirement under the law to initiate the departmental proceeding. The relevant paragraph-41 is quoted herein below:-

*"**41.** Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge-sheet. Rule 14(4) again mandates that the **disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved……"***

(viii) From perusal of the appellate order dated 22.11.2021, it does not appear that any of the points raised by the petitioner in his appeal dated 31.07.2021 stands considered. The petitioner raised the points that the departmental proceeding was conducted dehors the rules; that no witness was examined to prove; that proceeding was initiated under a repealed law; that the petitioner deposited the entire amount

when there was dispute relating to hand over the charge of the amount alleged; that punishment imposed was without any evidence; and that the punishment was highly excessive and disproportionate. But it appears that the appellate authority rejected the appeal without considering any of such points. There was no consideration at all by the appellate authority while rejecting the departmental appeal of the petitioner. The order of the appellate authority itself should reveal the application of mind and it cannot be simply adopting the language employed by the disciplinary authority and proceed to affirm its order. In this context, the Hon'ble Apex Court in the case of ***Chairman, Life Insurance Corporation of India & Ors. Vs*. *A. Masilamani***, reported in **(2013) 6 SCC 530** held in paragraph-19 thereof as under:-

> *"**19.** The word "consider" is of great significance. The dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order."*

(ix) From perusal of the documents enclosed with the writ petition, being W.P.(S) No. 3096 of 2021, it appears that Pension Intimation Memo was also issued on 2.7.2021 for payment of pensionery benefits. Even Gratuity Payment Order was also issued on 2.7.2021. But it further appears that the PPO and GPO were issued pursuant to the requests made by the District Superintendent of Education, Ramgarh by Memo No. 714 dated 10.6.2021 (Annexure-5 to the rejoinder) filed in W.P.(S) No. 3096 of 2021. However, by letter no. 835 dated 15.7.2021, further request was made to the office of Accountant General, Jharkhand, Ranchi by the same District Superintendent of Education, Ramgarh that such approval order for payment of pension and gratuity be cancelled. Under what circumstances this was done is not explained in the counter affidavit filed by the respondents. From

very inception, it appears that the authorities were bent upon to punish the petitioner in one way or the other. The respondents have filed counter affidavit, but none of the points raised in the writ petition has been raised. No paragraph reply has been given in the counter affidavit. Though in the counter affidavit it has been raised that the petitioner was inflicted a minor penalty. It also shows the predetermined mind of the authority though no such charge was framed against the petitioner which is evident from the memo of charge against the petitioner.

(x) In these backdrop of the facts, this Court usually directs the authorities to initiate fresh departmental proceeding, but faced with the aforesaid facts and circumstances, the present matter could not be remitted back to the authority to proceed in accordance with law, as the petitioner has already retired on 31.10.2022 and now the relationship of employee and employer has already ended.

<u>Conclusion</u>

9. As a sequitur to the aforesaid rules, regulations, guidelines and judicial pronouncements, the enquiry report dated 21.02.2019; penalty order dated 06.12.2019; and the appellate order dated 22.11.2021 are hereby quashed and set aside. Upon quashment of the penalty orders, the petitioner is entitled to get the pensionery benefits. As such, the respondents are directed to extend the entire pensionery benefits to the petitioner with admissible statutory interest within a period of six weeks from the date of receipt of a copy of this order. However, it is made clear that the petitioner is not entitled for back wages from the date of termination till the date of retirement, but the said period shall be calculated for the purpose of pensionery benefits.

10. Both these writ petitions are, accordingly, allowed.

(Dr. S. N. Pathak, J.)

R.Kr.