

Jharkhand High Court

Rajgrih Pal vs Central Coalfield Limited (A ... on 7 June, 2021

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 5564 of 2009

Rajgrih Pal

..... Petitioner

Versus

1. Central Coalfield Limited (A subsidiary of Coal India Ltd.)
having its registered office at Darbhanga House, through
its Chairman-cum-Managing Director, Ranchi.
2. Director Personnel (P), C.C.L., Darbhanga House,
Ranchi.
3. General Manager (A) Sirka, C.C.L, P.O. Argada, District-
Ranchi.
4. Personnel Manager, Sirka (A), P.O. Argada, District-
Ramgarh.
5. Project Officer (S.G.) Sirka, C.C.L, P.O. Argada, District-
Ramgarh. Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mrs. M.M.Pal, Sr.Advocate.
For the Respondents : Mr. A.K.Das, Advocate
Ms. Swati Shalini, Advocate

JUDGEMENT

C.A.V. on: 03.03.2021 Delivered on: 07/06/2021.

Heard learned counsel for the parties through V.C.

2. The instant writ application has been preferred by the petitioner praying therein for quashing and setting aside the order dated 11.02.2009 issued by respondent No.5, whereby the services of the petitioner has been terminated and also the appellate order dated 01.10.2009 passed by respondent no.2, whereby the appeal of the petitioner has been rejected.

The petitioner has also prayed for reinstatement of his service with back-wages and other consequential benefits.

3. The brief facts necessary for disposal of the instant writ application is that petitioner was initially appointed on 05.09.1980 to the post of Piece Rated Employee under the VRS for male workers wherein there is a provision for employment of the dependent in case of male employee applied for VRS. When the petitioner was performing his duties to the post of Munshi, a charge-sheet dated 10.12.1998 was issued to him alleging that he obtained employment claiming himself to be his son-in-law of one "Sado" although he did not have any such family relationship with him. For proper appreciation of this case, the charge-sheet issued against this petitioner is quoted herein

below in para 11 of counter-affidavit:-

"11. That it is stated that in the year 1998, petitioner was issued a charge-sheet dated 10.12.1998 alleging the commission of following acts of misconduct:

(i) "That under the Voluntary Retirement Scheme of CCL, you obtained employment in Sirka Colliery as P.R. Worker vide appointment letter No. GM(A/P/Vol.Rectt/80/SRK/18988 dated 05.09.1980 against the voluntary retirement of Sri Sado, Coal Cutter by declaring yourself to be his son-in-law, although you did not have any such family relationship with him. By such fraudulent means you got employment at Sirka Collierty in connivance with Sri. Sado and the then dealing officer of Sirka Colliery and G.M.Office, Argada Area.

(ii) That you are Gareri by Caste having the surname 'Pal' and the name of your father is Sri Jhuri, r/o village Piparia, P.O. Chhebari, Distt. Rohtas, whereas Sri Sado belongs to Munda Scheduled Tribe and he never married his daughter to you. After entering into the service of CCL, you got your surname 'Pal' recorded in the service sheet and other records.

Thus, you have fraudulently entered into the services of CCL on 08.09.80 and have since been illegally on the pay roll of the company."

4. The aforesaid charges constituted misconduct under clause 17(i)(a), 17(i)(o) of the Certified Standing Orders applicable to the petitioner. Pursuant to the aforesaid charge-sheet, petitioner submitted his reply and a departmental enquiry were constituted. The enquiry officer after conducting the enquiry submitted the report dated 26.12.2006 holding the charges as not proved.

Thereafter, the disciplinary authority being not in agreement with the findings of the enquiry officer made a decent note and issued a second show cause notice to this petitioner with proposed punishment. The second show cause notice clearly stipulated the grounds of disagreement with the finding of an enquiry officer. Thereafter, the petitioner had given a detailed reply; however, an order of punishment of removal from service has been passed observing that the petitioner is guilty of entering into the employment of the company fraudulently by falsely declaring him to be the dependent/son-in-law of Sri Sado.

Pursuant thereto; the petitioner preferred an appeal and also a writ application challenging the order of removal from service being W.P.(S) No. 2022 of 2009, which was disposed of by this Court vide order dated 7th May 2009 directing the respondent-authorities to dispose of the appeal. Pursuant to the order passed by this Court the appellate authority dismissed the appeal of this petitioner which was communicated to him vide impugned letter dated 01.10.2009.

5. Mrs. M.M.Pal, learned senior counsel challenged the order of dismissal as well as the appellate order by contending that the appointment order was issued by the Personal Manager and after 18 years from the date of the appointment of this petitioner, charge-sheet was issued. She further contended that the inquiry officer has properly conducted the enquiry and found the petitioner not guilty and opined that the charges are not proved.

However, a second show cause notice was issued to this petitioner by the disciplinary authority giving the reasons of disagreement and proposed punishment. However, it is a settled law that difference of opinion has to be based on proper evidence, but by looking to the second show cause notice wherein the grounds for disagreement is mentioned it would transpire that the difference of opinion is based on no opinion. In this regard learned senior counsel referred the judgment passed in the case of Punjab National Bank and others vs. Kunj Behari Misra reported in (1998) 7 SCC 84. Para 18, 19 and 20 are quoted herein below:-

"18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar .

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

20. The aforesaid conclusion which we have arrived at is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants. While agreeing with the decision in Ram Kishan case we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena [State of

Rajasthan v. M.C. Saxena, cases do not lay down the correct law."

6. Learned senior counsel further submits that the second show cause notice was issued after more than two years from the date of enquiry report and as aforesaid the same was based on no evidence. She further submits that the surname 'Pal' was duly mentioned in the appointment letter of the petitioner and the allegation that the petitioner has added 'Pal' subsequent to his marriage is not correct. Further, the allegation that since the erstwhile employee who took VRS was a Munda and his name was Sado Munda so this petitioner cannot be married to Munda community is misconceived and non est in the eye of law as inter-caste marriage is no bar nor it is illegal.

7. Learned senior counsel further raised a legal question that the dismissal order has been passed by the Project Officer who is much below the rank of Personnel Manager (A) who was the appointing authority. She summarized her argument by submitting that the dismissal order dated 11.02.2009 and the appellate order dated 01.10.2009 are illegal, improper, arbitrary and contrary to the established law. Further, the dismissal order being passed by the Project Officer is also without jurisdiction. Since in the enquiry preceding no charge has been proved against the petitioner; the order of dismissal on the basis of no evidence is bad in law and as such, the petitioner deserves to be reinstated in service along with back wages.

Before concluding her arguments she also referred that the authority of the respondents who recommended the case of his father-in-law for VRS and offered employment to this petitioner was though also charge- sheeted by the CCL, but later on, they were exonerated from the charges; as such even this petitioner should also not be punished.

8. Mr. A.K.Das, learned counsel for the respondent- Company at the outset raised a preliminary objection, inasmuch as, the petitioner is a workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947, as such proper remedy on the subject would lie before the appropriate authority and the forum created under the Industrial Disputes Act.

9. Mr. Das further referred to the enquiry report submits that during the course of cross-examination of the Management witness M.W.(1), the defendant asked to prove from the said Management witness to substantiate that the petitioner is not the son-in-law of Sado Munda and to which the Management witnesses gave a satisfactorily reply explaining the particulars of family members of Sado and further stating categorically that Sado Munda had no daughter named Kalawati Devi who was claimed to be wife of this petitioner. This categorically statement of the management witness was not denied by the petitioner.

Learned counsel further referred to the deposition of D.W.-1 and 2 who were cross-examined and vides answer to question nos. 9 and 14 respectively, stated that they are not aware as to the place where the marriage of the petitioner with Kalawati Devi took place and that their deposition are based on hearsay.

Learned counsel further referred the enquiry proceeding dated 05.10.2005 and submits that during the cross-examination of this petitioner in reply to the question no. 10 the petitioner failed to

produce any cogent materials in support of his contention that late Sado Munda had any daughter named Kalawati Devi.

10. Learned counsel by referring to the aforesaid facts from the enquiry report submits that it was a full-fledged enquiry and the respondent-Company duly followed the principles of natural justice and there is no procedural lapse in conducting the enquiry against this petitioner, inasmuch as, when the petitioner was exonerated by the inquiry officer; the disciplinary authority in its second show cause notice elaborated the grounds of disagreement with the findings of inquiry officer which are self explanatory. He further submits that though even on merits, the petitioner is having no case; however, it is now well settled that this Court cannot re-appreciate the evidence.

In this regard learned counsel referred to a judgment delivered in the case of Management of State Bank of India vs. Smita Sharad Deshmukh reported in (2017) 4 SCC 75 wherein at paragraph 5 and 6 the Hon'ble Apex Court has held as under:--

"5. It is a well-settled principle that the High Court will not reappreciate the evidence but will only see whether there is evidence in support of the impugned conclusion. The court has to take the evidence as it stands and its only limited jurisdiction is to examine, whether on the evidence, the conclusion could have been arrived at. (See Union of India v. H.C. Goel .)

6. In Bank of India v. Degala Suryanarayana, after referring to H.C. Goel case , this Court held at para 11:

"11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."

11. Mr. Das further controverted the argument of learned senior counsel that the Project Officer is not a competent authority to pass the impugned order. In this regard he submits that the Certified Standing Orders in respect of respondent-Company is prepared and certified by the appropriate Government under the provisions of Industrial Employment (Standing Order) Act, 1946 and is applicable to all workmen employed under all its CCL. He further referred Circular dated 01.10.1999 and submits that the Project Officer was empowered to issue order of dismissal.

12. Learned counsel lastly submits that the contention of the petitioner that he has served the company for 18 long years, hence he has got right to salary and pension; has no legs to stand in the eye of law because the appointment was void ab initio.

13. He concluded his argument by submitting that there is no illegality in the impugned orders and at best the petitioner can raise all these disputes before the competent authority constituted under the Industrial Disputes Act.

14. Having heard learned counsel for the parties and the averments made in the respective affidavits and the documents annexed therein, it appears that a charge-sheet was issued against this petitioner for fraudulently entering into the service of CCL by claiming himself to be son-in-law of the erstwhile employee-Sado Munda and thus illegally came in the pay roll of the company and hence, committed misconduct under the relevant provisions of Certified Standing Orders.

It further transpires that a departmental proceeding was initiated against this petitioner where the delinquent employee was given full opportunity of defending himself and the inquiry officer held that charges are not proved. It also transpires that the second show cause notice was issued with a detailed note indicating the grounds of disagreement with the findings of inquiry officer to which the petitioner gave a detailed reply. Thereafter, his reply was considered and finally the order of dismissal has been passed. So it clearly transpires that the principle of natural justice has been fully complied.

15. Learned counsel for the petitioner argued that difference of opinion by the disciplinary authority is not based on evidence. In this regard reference may be made to the enquiry report. From perusal of the documents of the enquiry proceedings it appears that vide question no. 10 and 17 in the cross-examination of the management witness to substantiate that the petitioner is not son-in-law of erstwhile employee-Sado, it appears that the Management witness gave a satisfactorily reply even explaining the particular of family members of Sado and even stating categorically that he had no daughter named Kalawati Devi with whom the petitioner claims to have married.

From enquiry report it also appears that the defence witness no. 1 and 2 during cross-examination had categorically admitted that they were not aware as to place where the marriage of the petitioner with Kalawati Devi took place and their statement is hearsay.

It further transpires that one defence witness named Indu Devi who was the only relative of erstwhile employee- Sado Munda was also cross-examined and she stated that she got job in CCL during 1973-74 and she was married with Sri Sambhu Munda-elder son of Sado. She further stated that before her marriage, both her sister-in-law (Nanad) were married; however petitioner had stated that he was married to Kalawati Devi in 1979. The said Indu Devi could not even tell about the family members of the petitioner. This all goes to show that the management has given ample opportunity to the petitioner for defending his case, but the petitioner failed to satisfy the respondents that he was son-in-law of erstwhile employee and looking to all these facts the disciplinary authority differed with the finding of enquiry officer and finally imposed punishment of dismissal after issuing 2nd show-cause notice. Thus, it cannot be said that opinion of the

disciplinary authority is not based on evidence; rather the conclusion arrived by the disciplinary authority is based on evidence.

At this stage, it is pertinent to mention here that this Court cannot re-appreciate the evidence but will only see whether there is evidence in support of the impugned conclusion. This Court has to take the evidence as it stand and its only limited jurisdiction is to examine, whether on the evidence, the conclusion could have been arrived at. In this regard reference may be made to a latest judgment passed in the case of State of Bihar & Ors. vs. Phulpari Kumari reported in (2020) 2 SCC 130 para 6.1 and 6.2 are quoted herein below:-

"6.1. It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of "no evidence". Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court where the guilt of the accused has to be proved beyond reasonable doubt. On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.

6.2. The High Court ought not to have interfered with the order of dismissal of the respondent by re-examining the evidence and taking a view different from that of the disciplinary authority which was based on the findings of the inquiry officer."

16. Learned sr. counsel also argued that the Project Officer was not competent to exercise powers of the disciplinary authority as the petitioner was appointed by HR Department and was posted at Sirka Colliery under Project Officer. From the Circular dated 01.10.1999 which has been produced at the time of hearing is a part of Certified Standing Orders which clearly transpires that the power has been delegated upon the Project Officer and it has been categorically directed that in respect of Areas to CCL, the Chief General Manager, General Manager, Project Officer and Colliery Managers will be competent authority to exercise the powers for implementation of the provisions of Standing Orders and taking disciplinary action under the provisions of Certified Standing Orders.

Thus, looking to the circular it is held that the stand of the petitioner that project officer was not competent to pass the order of removal is non est in the eye of law and has no legs to stand.

17. Learned senior counsel also contended that since the petitioner worked for 18 years as such; he should have been given other subsequent benefits/post retiral benefits after reinstatement. In this regard it is well settled law that if any appointment is void ab-initio then the petitioner cannot have right to claim for salary and/or pension. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal.

In the instant case since the disciplinary authority after disagreeing with the findings of the inquiry officer came to conclusion that petitioner has acquired job by committing fraud by claiming himself to be son-in-law of erstwhile employee-Mr. Sado Munda; as such, the claim of re-instatement in

service and other consequential benefits cannot be extended to this petitioner. Reference in this regard be made to the judgment passed in the case of R. Vishwanatha Pillai vs. State of Kerala & Ors reported in (2004) 2 SCC 105 wherein at paragraph no. 15 the Hon'ble Apex Court has held as under:-

"15. This apart, the appellant obtained the appointment in the service on the basis that he belonged to a Scheduled Caste community. When it was found by the Scrutiny Committee that he did not belong to the Scheduled Caste community, then the very basis of his appointment was taken away. His appointment was no appointment in the eye of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all."

18. In view of the aforesaid discussions, it is clear that there is no procedural lapse in conducting the enquiry against this petitioner and as discussed hereinabove, the findings are based on evidence and the same is not perverse; no relief can be granted to this petitioner.

19. Consequently, the instant writ application is, hereby, dismissed. However, there is no order as to costs.

(Deepak Roshan, J.) Jharkhand High Court Dated/ 07 /06 /2021 Amardeep/AFR