

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 6254 of 2009

Jagannath Prasad Singh Petitioner

Versus

1. The State of Jharkhand
2. The Secretary, Government of Jharkhand, Health & Family Welfare Department , Ranchi
3. Director, Health & Family Welfare Department, Jharkhand, Ranchi
4. The Deputy Director, Health & Family Welfare Department, Jharkhand, Ranchi
5. Chief Medical Officer, Dumka
6. Additional Chief Medical Officer, Dumka
7. Accountant General, Jharkhand, Ranchi
8. Deputy Commissioner, Dumka
9. Treasury Officer, Dumka
10. Regional Deputy Director, Health Services, Dumka

.... ... Respondents

CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioner : M/s Atanu Banerjee, Durga Charan Mishra, Advocates

For the State : Mr. Abhay Kr. Mishra, S.C.-III

For the Accountant-General : Mr. S. Shrivastava, Advocate

13/29.11.2013

Challenging order dated 19.09.2011 which was modified by order dated 21.02.2013, the petitioner has approached this Court.

2. The brief facts of the case are that, the petitioner was appointed as Bill Clerk on 12.02.1984. A Charge memo was served upon the petitioner on 11.03.2006. The petitioner was put under suspension by order dated 25.03.2006. A departmental proceeding was initiated into the allegation of withdrawing an excess amount of Rs. 26,132/- by order dated 09.10.2006. The order of suspension was revoked w.e.f. 30.07.2009 and thereafter, the petitioner superannuated w.e.f. 31.07.2009. The enquiry report dated 23.12.2009 was submitted and an order imposing penalty of deduction of 5 % of the pension for 3 years and recovery of an amount of

Rs. 5,29,787/-, has been passed. It is also ordered that the petitioner would not be entitled for anything except subsistence allowance during the period of suspension, as the order was modified by order dated 21.02.2013 by deleting the order of recovery of an amount of Rs. 5,29,787/-.

3. A counter-affidavit dated 17.02.2010 has been filed by the respondent nos. 2, 3 & 4 stating as under :

11. "That in reply to Para-7 of the writ petition, it is stated and submitted that while posting in the office of Additional Chief Medical Officer, Dumka on the post of Accountant-cum-Bill Clerk the Petitioner had made forgery in Government record and committed defalcation of Government Money for which he was placed under suspension by the order of the Deputy Secretary, Health Department, Govt. of Jharkhand, Ranchi vide memo No. 121 (2) dated 25.03.06.

15. "That in reply to para-11 of the writ petition, it is stated and submitted that the Regional Deputy Director, Health Services, Santhal Parganas Division, Dumka was appointed as conducting officer and after due enquiry he has already submitted his enquiry report vide Letter No. 576 dated 23.12.09 to the under Secretary, Health Department, Govt. of Jharkhand, Ranchi.

19. That in reply to Para-15 of the writ petition, it is stated and submitted that in this connection a decision of Government of Jharkhand, Health Department, Ranchi has been communicated by the under Secretary to Government Health Department, Ranchi vide memo No. 412(4) dated 05.09.2000, the petitioner has retired from service and hence, departmental proceeding has started

against him under Rule 43(b) of Pension Rule and the payment of his dues amount to be considered on the result of departmental proceeding drawn up against him."

4. A counter-affidavit dated 14.10.2011 has been filed stating as under:

7." That for several charges the petitioner was suspended vide memo no. 171 (8) dt. 25.03.2006 and a departmental proceeding was started. After getting the inquiry report the Government has punished the petitioner vide its order no. 550(4) dt. 19.9.11."

5. A supplementary counter-affidavit dated 25.2.2013 has been filed stating as under:

6."That it is most humbly stated and submitted that in pursuant of the order dated 01.02.2013, the matter was considered in detail and the punishment of recovery of Rs. 5,29,787/- (Rupees Five Lakh Twenty-Nine Thousand Seven Hundred Eighty-Seven) from the retiral benefits of the petitioner has been withdrawn vide order no. 79(18) dated 21.02.2013."

6. Heard learned counsel for the parties and perused the documents on record.

7. The learned counsel appearing for the petitioner has submitted that the Enquiry Officer has not considered even the foundational facts and no finding has been recorded by the Enquiry Officer and therefore, on the basis of such enquiry report, no order of penalty should have been passed and thus, the impugned order dated 19.09.2011 which was modified by order dated 21.02.2013 is liable to

be quashed.

8. On the other hand, the learned counsel appearing for the respondent-State of Jharkhand has submitted that from the enquiry report it would appear that there was an order directing the petitioner to deposit an amount of Rs. 26,132/- which he had withdrawn in excess and therefore, the charge has been admitted by the petitioner.

9. On a perusal of enquiry report dated 23.12.2009, I find that the Enquiry Officer has not even discussed the charge framed against the petitioner. There is no mention whether the Department relied on any document or produced any witness in support of the charge framed against the petitioner. The enquiry report is cryptic and it cannot be taken into consideration by the Department for inflicting order of penalty as contained in orders dated 19.09.2011 and 21.02.2013.

10. In "*M.V. Bijlani Vs. Union of India and Others*", reported in (2006) 5 SCC 88, the Hon'ble Supreme Court has held as under:

25." It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of

materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

11. In view of the aforesaid, the impugned order dated 19.9.2011 is quashed. However, it would be open to the Department to conduct a fresh enquiry after supplying necessary documents to the petitioner and pass appropriate order. It is, however, clarified that the Department would finalize the pension of the petitioner and ensure that pension is paid to the petitioner as early as possible, preferably within a period of twelve weeks and during the said period enquiry should also be completed.

12. The writ petition is disposed of in the aforesaid terms.

(Shree Chandrashekhar, J.)