IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 3378 of 2006

Paramhansh Jha ….. Petitioner

Versus

The State of Jharkhand & Others ….. Respondents

PRESENT
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner - Mr. A.K.Sahani
For the Respondents - Mr. J.C to G.P-I

By Court: In this writ petition, the petitioner has prayed for quashing the resolution, as contained in Memo No. 539 dated 10.2.2006 (Annexure-6), whereby an order has been passed for recovery of a sum of Rs. 1,55,215.75 from the salary of the petitioner in instalments along with punishment of censure to be recorded in the service book of the petitioner for the year 2002-03.

2. During pendency of the writ petition, the respondents had passed an order dated 12.8.2010, as contained in Memo No. 39 (Annexure-10), whereby an amount of Rs. 62,082/- has also been directed to be recovered from the petitioner. The said order had also been challenged by way of I. A. No. 3158/2010, which was allowed on 15.2.2011.

3. The brief facts of the case, as has been argued on behalf of the petitioner, is that while the petitioner was posted as Store Keeper in Drinking Water and Sanitation (Mechanical) Division, Jamshedpur, a theft was committed on 15.2.2003 in the store of Drinking water and Sanitation (Mechanical) Division, Jamshedpur. The petitioner had reported about the incident of theft on 17.2.2003 to the Officer-In-Charge, Adityapur P.S on the basis of which Adityapur P.S Case No. 37/03 was registered under Sections 461/379 IPC. In course of investigation, a seizure list was prepared by the investigating officer bearing signature of the petitioner. Accordingly, a show cause notice was issued on 21.10.2003 to the petitioner, which had been duly replied by him denying the allegation of commission of any irregularity on his part.

4. The grievance of the petitioner is that although he had given a detail reply denying allegations, but the authorities vide the order dated 10.2.2006, without considering the reply, has inflicted the punishment of deduction of a sum of Rs.

1,55,215.75 along with the punishment of censure to be entered in the service record of the petitioner for the year 2002-03.

5. Learned counsel for the petitioner submitted that along with the petitioner, a sum of Rs. 62,086/- had been directed to be recovered from one Ram Yad Singh, who had preferred a writ petition before this Court being W.P.(S) No. 7651/2006, wherein impugned order of recovery passed against Ram Yad Singh had been quashed giving liberty to the Government to proceed afresh, as would be evident from the order dated 5.8.2009 passed in W.P(S) No. 7651/2006. In compliance of the said order, the authorities have passed a reasoned order on 21.1.2010 in which Ram Yad Singh has been exonerated from the charges and accordingly the order by which a sum of Rs. 62,086/- had been directed to be recovered from Ram Yad Singh, was cancelled. Thereafter, the authorities have passed an order on 12.8.2010, whereby a sum of Rs. 62,082/- has been directed to be recovered from the petitioner.

6. It has been submitted that the petitioner had retired from service w.e.f 30.6.2010 and the order dated 12.8.2010 to recover the amount of Rs. 62,082/- has been passed without initiating any departmental proceeding. The recovery of Rs. 62,082/- cannot be said to be a part of the original charge levelled against the petitioner. So far as the impugned order dated 12.8.2010 is concerned, a regular departmental proceeding under Rule 43(b) of the Bihar Pension Rules ought to have been initiated against the petitioner.

7. Learned counsel for the respondents-State has submitted that the allegation levelled against the petitioner is serious in nature and only due to dereliction in discharging the duty, the alleged theft had taken place.

8. Heard the parties, perused the record.

9. So far as the impugned order dated 10.2.2006 is concerned, admittedly, the same had been passed while the petitioner was in service. A show cause notice had been issued to him perhaps due to the reason that the authorities had wanted to recover certain amount, which will come under the definition of minor punishment according to the provision of Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, 1930. According to the provision of Rule 55(A) of the Civil Services (Classification, Control and Appeal), Rules, 1930, there is requirement of issuing show

cause notice for imposing minor punishment and accordingly the show cause notice had been issued. The petitioner had given a detail reply.

10. From perusal of the impugned order dated 10.2.2006, it transpires that the authorities have not applied their mind because of the fact that recovery of certain amount from a public servant can be made is the nature of minor punishment under the provision of Rule 55(A) of the Civil Services (Classification, Control and Appeal) Rules, 1930, but where there is a provision to issue show cause notice, the mandatory requirement of law is that the reply given by the delinquent employee, is supposed to be properly considered. The meaning of the word 'consideration' is very wide, as has been defined in the judgment rendered by Hon'ble Apex Court in the case of **the Chairman, Life Insurance Corporation of India Vs. A. Masilamani** reported in **(2013) 6 SCC 530,** wherein at Paragraph 19, it has been held as follows:

> "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 ....."

11. In view of the definition of the word 'consideration', in my view, the authorities have not applied their mind, as such the impugned order dated 10.2.2006 cannot be accepted to be a reasoned order because if they would have applied their mind, the reason should have been reflected in the order i.e. what is in the mind of the authorities, on the basis of which impugned order has been passed. Hence, the impugned order dated 10.2.2006 cannot be said to be justified.

12. So far as the impugned order dated 12.8.2010 is concerned, from perusal of the same, it appears that no regular proceeding has been initiated, which is the requirement of law in view of the fact that the petitioner had retired from service w.e.f 30.6.2010. After retirement, there cannot be any order of recovery without resorting to the procedure provided under the law. The impugned order dated 12.8.2010 reflects that no regular proceeding or even no show cause notice has been given to the petitioner. Hence, the impugned order dated 12.8.2010 is also not justified.

13. In view of the reasons aforementioned and in the facts and circumstances stated hereinabove, the impugned orders dated 10.2.2006 (Annexure-6) and dated 12.8.2010 (Annexure-10) are not sustainable in the eye of law and the same are, hereby, quashed.

14. The matter is remanded to the competent authority to consider the same afresh and pass a reasoned order in accordance with law after taking into consideration the reply already submitted by the petitioner, within a reasonable period, preferably within a period of eight weeks, from the date of receipt / production of a copy of this order.

15. However, the respondents are at liberty to proceed with the matter in accordance with law.

(SUJIT NARAYAN PRASAD, J)

Jharkhand High Court, Ranchi
Dated 30.1.2015
S.K/NAFR