

Keshaw Prasad Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 30, 2025

Acts Referred: Jharkhand Government Employees' (Classification, Control and Appeal) Rules, 2016 "Rule 24, 14(xi)

Hon'ble Judges: M.S. Ramachandra Rao, CJ; Deepak Roshan, J

Bench: Division Bench

Advocate: Sumeet Gadodia, Shilpi Sandil Gadodia, Shruti Shekhar, Prakhar Harit, Nillohit Choubey, Ashok Kumar Yadav, Aditya Kumar

Final Decision: Allowed

Judgement

Deepak Roshan, J.

1. The instant intra-court appeal is preferred by the writ petitioner/appellant challenging the order dated 23.01.2024 passed by the Writ Court in W.P.

(S) No. 5840 of 2023, wherein writ application filed by appellant was dismissed as not maintainable on the ground of availability of alternative remedy

of appeal under Jharkhand Government Employees' (Classification, Control and Appeal) Rules, 2016 [hereinafter referred to as "Rules of

2016"].

2. The brief fact of the case is that appellant was appointed on 20.12.1999 on the post of 'Clerk' at Hazaribagh Collectorate and was scheduled to

retire from service on 28.02.2026. A departmental proceeding vide order dated 20.12.2017 was initiated against this appellant while serving him

charge-sheet, primarily on the ground of alleged irregularities committed in payment of compensation with respect to land acquisition pertaining to

Land Acquisition Case No. 01/2011-12 initiated by District Land Acquisition Officer, Ramgarh. During the relevant period, i.e. 2015-16, appellant was

posted as 'Upper Division Clerk' in the office of District Land Acquisition Officer, Ramgarh.

3. It is the case of the appellant that before initiating departmental proceeding, District Commissioner, Ramgarh directed District Land Acquisition

Officer, Ramgarh to submit its report pursuant to a complaint made by one Fagu Besra regarding alleged irregularities in payment of compensation.

Pursuant thereto, the District Land Acquisition Officer, Ramgarh submitted its report dated 26.09.2016, wherein alleged irregularities in payment of

compensation was pointed out. Thereafter, another report dated 04.10.2016 was also submitted by District Land Acquisition Officer, Ramgarh,

wherein names of six persons including the present appellant were identified as being responsible for such irregularities and only thereafter,

departmental proceeding was initiated against the appellant. However, since appellant was not supplied the copy of the aforesaid reports dated

26.09.2016 and 04.10.2016, appellant requested the enquiry officer for supply of the aforesaid reports including the complaint dated 20.08.2016 filed by

the said Fagu Besra which led to initiation of disciplinary proceedings.

4. Consequent upon the request made by the appellant, enquiry officer vide its letter dated 16.06.2019 forwarded the application of the appellant to

District Land Acquisition Officer, Ramgarh i.e. presenting officer to make available the required documents to the appellant but the said documents

were never supplied to the appellant and, on the contrary, the presenting officer after a lapse of more than two years of the initiation of disciplinary

proceedings submitted a letter dated 21.02.2022 before the enquiry officer stating, inter alia, that the two reports submitted by the District Land

Acquisition Officer, Ramgarh dated 26.09.2016 and 04.10.2016 be treated as written and oral evidence of presenting officer.

5. Consequent upon aforesaid letter submitted by presenting officer, enquiry officer submitted its enquiry report without serving copy to the appellant.

Thereafter, disciplinary authority i.e. the Deputy Commissioner, Ramgarh without issuing any second show cause notice to the appellant and without

supplying enquiry report passed an Office Order contained in Memo No. 394 dated 18.09.2023 imposing penalty of compulsory retirement from

service in terms of Rule 14(xi) of the Rules of 2016.

6. Being aggrieved by the aforesaid penalty order, writ application was filed by appellant which was dismissed by Learned Single Judge on the ground

of availability of alternative remedy of appeal in terms of Rules 24 of Rules of 2016.

7. Mr. Sumeet Gadodia, counsel appearing for appellant while assailing the impugned order submitted that the Writ Court without considering the fact

that entire disciplinary proceeding was conducted in utter violation of the principle of natural justice, has relegated the appellant to avail the alternative

remedy of appeal which is not sustainable in the eye of law. It has been submitted that existence of alternative remedy is not a bar in exercise of writ

jurisdiction, especially in cases, where there is violation of the principles of natural justice.

8. Per contra, counsel appearing for state-respondent supported the impugned order and submitted that appellant has an effective alternative remedy

of preferring an Appeal under Rule 24 of the Rules of 2016 and writ petition was rightly dismissed.

9. Having considered the facts of the case, we are of the opinion that dismissal of the writ petition by the Writ Court merely on the ground of

existence of alternative remedy of appeal is contrary to the settled decisions of Hon'ble Supreme Court including the decision rendered in the case

of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors, reported in (1998) 8 SCC 1. In the said judgment, the Hon'ble Apex Court

has reiterated the well-known exceptions with regard to bar in entertaining a writ petition namely, where the writ petition has been filed for

enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings

are wholly without jurisdiction or the vires of an act is challenged.

10. A bare perusal of the facts of the present case would reveal that one Fagu Besra filed a complaint regarding alleged irregularities in payment of

compensation pertaining to L.A. Case No. 01/2011-12 and, pursuant thereto, Deputy Commissioner, Ramgarh directed District Land Acquisition

Officer, Ramgarh to submit reports which were submitted vide reports dated 26.09.2016 and 04.10.2016, wherein apart from other persons, name of

the appellant transpired as being responsible for such irregularities.

11. On the basis of aforesaid reports, departmental proceeding was initiated against the appellant, but, copy of the said reports were never supplied to

appellant despite the fact that appellant specifically demanded for said reports and even the enquiry officer vide its letter dated 16.06.2019 directed the

presenting officer to make available the required documents to the appellant.

12. From the records of the case, it further transpires that on one hand, copy of relied upon documents were not supplied to appellant and, on the other

hand, after lapse of more than two years, the presenting officer submitted a letter before the enquiry officer dated 21.02.2022 to treat the reports

dated 26.09.2016 and 04.10.2016 as written and oral evidence of the presenting officer.

13. Admittedly, no witnesses were examined and/or documents were proved and no opportunity of cross-examination, whatsoever, was given to the

appellant far less supplying the copy of the enquiry report. Even no second show cause notice was issued to the appellant and, straightaway, the

disciplinary authority i.e. Deputy Commissioner-cum-District Magistrate, Ramgarh passed an order dated 18.09.2023 imposing penalty of compulsory

retirement upon the appellant in terms of Rule 14(xi) of the Rules of 2016.

14. We are of the considered opinion that entire disciplinary proceeding which was conducted against the appellant was in stark disregard to the

principle of natural justice and, in fact, after initiation of disciplinary proceedings, no procedure, whatsoever, was followed before imposing punishment

upon appellant.

15. Under the aforesaid circumstances, we are of the opinion that the Learned Single Judge failed to consider the aforesaid aspects of the matter and

without even considering the fact that entire disciplinary proceedings were conducted in violation of principles of natural justice; dismissed the writ

petition, relegating the appellant to avail the alternative remedy of appeal which in our opinion is not correct.

16. Ordinarily, we would have remanded the matter back to Learned Single Judge for fresh adjudication but while issuing notice in the present matter

vide order dated 16.05.2024 it was recorded by us as under:-

“Order No. 03 / Dated: 16th May, 2024

After hearing the learned counsels for the parties, this Court has formed an opinion that at this stage an ad-interim order staying operation of the order of

compulsory retirement dated 18.09.2023 need not be passed.

2. However, we indicate that if the petitioner finally succeeds he shall be entitled to full salary and allowances from the date of compulsory retirement.

3. Post this matter on 12th June, 2024.

(Shree Chandrashekhar, A.C.J.)

(Navneet Kumar, J.)

17. Even otherwise, appellant is scheduled to retire on 28.02.2026 i.e. within a period of about one year. In view of the aforesaid discussions, we

hereby set aside the judgment and order dated 23.01.2024 passed by the Writ Court in W.P.(S) No. 5840 of 2023 and we further set aside the Office

Order contained in Memo No. 394 dated 18.09.2023 passed by Respondent No. 2, wherein punishment of compulsory retirement has been passed

against appellant. We also direct the concerned respondent to reinstate the petitioner-appellant in service with all consequential benefits including full

salary and allowances from the date of compulsory retirement. However, respondent-authorities would be at liberty to initiate departmental proceeding

against the appellant in accordance with law, if so advised.

18. Accordingly the instant letters patent appeal stands allowed. Pending, I.As., if any, stand disposed of. There shall be no order as to costs.