

(2013) 11 JH CK 0020

Jharkhand High Court**Case No:** Writ Petition (S) No. 3411 of 2013

Suresh Tudu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Nov. 11, 2013**Hon'ble Judges:** S. Chandrashekhar, J**Bench:** Single Bench**Advocate:** Rajeeva Sharma, for the Appellant; Jay Shankar Tiwary, J.C. to S.C.I., for the Respondent**Final Decision:** Dismissed

Judgement

S. Chandrashekhar, J.

Challenging order dated 27.07.2012, terminating the service of the petitioner, the present writ petition has been filed. The brief facts of the case as disclosed in the writ petition are that, the petitioner was appointed as Rojgar Sewak on contractual basis in the MNREGA scheme. The petitioner joined at Bartalla Panchayat in Hiranpur Block, then he was transferred to Kunjbona Panchayat in Littipara Block. On 28.06.2012, a show-cause notice was issued to the petitioner on the allegation that the muster rolls, job cards, deposit forms etc. were found in the custody of one Shankar Pramanik and Rakshakar Sah who are not even government employees. The petitioner submitted his reply to the show-cause notice denying the charge of negligence. However, an enquiry was conducted into the matter and in the enquiry report dated 23.05.2012, it was found that it was the responsibility of the petitioner to keep muster rolls cards, job cards and other relevant documents relating to the MNREGA scheme in safe custody. The charge against the petitioner was found proved and therefore, by order dated 27.07.2012, the petitioner was terminated from service.

2. A counter-affidavit has been filed taking a plea that the service of the petitioner has been terminated on the ground of specific charge of his involvement in bungling of MNREGA scheme by preparing fake muster rolls and other documents.

Copies of the muster rolls and other relevant documents were seized from the possession of Shankar Pramanik and Rakshakar Sah whereas, the petitioner was the custodian of those documents. An enquiry was conducted by the Executive Magistrate and it has been found that one middleman namely, Shankar Pramanik was involved in preparation of fake documents and other relevant documents. Paragraph Nos. 10-11 of the counter-affidavit are extracted below:

10. That with regard to the statement made by the petitioner in paragraph-8 to 11, in the instant writ petition under reply, it is humbly stated and submitted that although there is no allegation of forgery against the petitioner previously but on an enquiry conducted by the Executive Magistrate, it has been found that some Rojgar Sewak including the petitioner were involved in a bungling of MNREGA Schemes by preparing fake Muster Rolls and relevant documents with the help of one middleman Shankar Pramanik. After getting such enquiry report and having found the petitioner's involvement in the said bungling the respondent Deputy Commissioner, Pakur issued order of termination from the services of Rojgar Sewak. As a matter of fact the duties and responsibilities as prescribed in MNREGA, the Rojgar Sewak is duty bound for recording attendance of labour every day either himself/herself or through the Mate in the prescribed Muster Rolls at the worksite besides other prescribed duties. As such the petitioner as a Rojgar Sewak may not and cannot deny his responsibilities of being the custodian of the Muster Rolls and relevant documents. On the other hand the Muster Rolls and other documents recovered/seized from the custody of a person who is not concerned in any way with those papers which clearly indicate the connivance and active participation of the petitioner Rojgar Sewak in the bungling by preparing fake Muster Rolls and other documents with the help of one middle man, the said Shankar Pramanik and for which FIR has been lodged Criminal Case has been initiated.

11. That with regard to the statement made by the petitioner in paragraph-12 to 15, in the instant writ petition under reply, it is humbly stated and submitted that the same are matter of record, hence required no comment. But, in the same length it is very pertinent to be mention here that the Muster Rolls and other relevant documents should have been in the custody of the Rojgar Sewak but which have been recovered and seized from the custody of a person who is not concerned with the MNREGA schemes. On receipt of such information as regard bungling of MNREGA Schemes by preparing fake Muster Rolls and other relevant document an enquiry has been conducted by Executive Magistrate. Such enquiry report reveals that the petitioner is indulging the said bungling of MNREGA Schemes in preparing fake Muster Rolls with the help of a middle man namely, Shankar Pramanik.

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

4. Mr. Rajeeva Sharma, the learned senior counsel appearing for the petitioner has submitted that there is no charge of forgery leveled against the petitioner and although the mate namely, Gangaram Thakur admitted his guilt, he was not

terminated from service and the petitioner has been terminated from service illegally and therefore, the impugned order dated 27.07.2012 has been passed in violation of Article 14 of the Constitution of India. He has further submitted that even in cases of contractual appointments the proportionality of punishment has to be taken into consideration and since there is no specific charge of forgery against the petitioner, the penalty of termination of petitioner from service is excessive and disproportionate to the charge found proved against the petitioner.

5. On perusal of the documents on record, I find that the petitioner was appointed as Rojgar Sewak on contractual basis and a show-cause notice was issued to the petitioner on 28.06.2012. After an enquiry, service of the petitioner has been terminated by order dated 27.07.2012. In the enquiry report, it has been found that the petitioner tried to shift his responsibility on the mate. Vide letter dated 19.05.2011, it was the Rojgar Sewak who has been made responsible for the safe custody of all the documents and since the copies of muster rolls, job cards and register were found in the custody of a person who is not in the government service, the charge of negligence against the petitioner has been found proved.

6. I do not find any material on record to conclude that the order of termination is in violation of Article 14 of the Constitution of India. In a matter in which charges against the delinquent employees are not similar and the co-delinquents have been trying to shift burden on each other, there cannot be any violation of the equality clause enshrined in Article 14 of the Constitution of India. Further, in view of the charge framed and found proved against the petitioner and the fact that the petitioner was appointed as Rojgar Sewak on contractual basis, I do not find any substance in the contention raised on behalf of the petitioner that the order of termination of the petitioner from service is excessive and disproportionate to the charge found proved. I find no merit in the writ petition. Accordingly, this writ petition is dismissed.