

(2013) 10 JH CK 0027

Jharkhand High Court

Case No: Writ Petition (S) No. 4908 of 2009

Vakil Prasad Singh

APPELLANT

Vs

Jharkhand State Electricity Board
and Others

RESPONDENT

Date of Decision: Oct. 25, 2013

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Dhananjay Kr. Dubey, for the Appellant; Rohit, for the Respondent

Judgement

Aparesh Kumar Singh, J.

Heard counsel for the parties. The petitioner was placed under suspension by order contained in Office Order No. 1621 dated 10th October 2009 (Annexure-6) issued by the Respondent No. 4-Joint Secretary-II, Jharkhand State Electricity Board, Ranchi.

2. As per the submission of the counsel for the petitioner, by the impugned order dated 10th October 2009, he has been placed under suspension with retrospective effect from 2nd August 2009 which is not permissible in law as there is no provision to pass order placing an employee under suspension with retrospective effect under Rule 100 of the Service Code. This view has also been held by a Division Bench of Patna High Court in the case of [Bachcho Lal Das Vs. State of Bihar and Others](#), Learned counsel, by referring to Annexure-11 to the I.A. No. 2970/2013, submits that the Respondent No. 4-Joint Secretary-II, Jharkhand State Electricity Board by another order dated 9th December 2009, modified the order dated 10th October 2009 whereby petitioner was placed under suspension with retrospective effect i.e. 2nd August 2009 and made it effective from the date of issuance of the order which is in the teeth of well settled legal position.

3. Since the petitioner has challenged the Annexure-11 dated 9th December 2009 by way of I.A. No. 2970/2013 whereby earlier order of suspension has been modified, the present I.A. is being allowed to enable the petitioner to challenge the order at Annexure-11 dated 9th December 2009 as well.

4. Heard learned counsel for the parties and gone through the relevant materials on record including the impugned order dated 10th October 2009. It is apparent that the petitioner was taken into custody earlier in connection with the Vigilance Case No. 28/2008 and was placed under suspension by office order no. 2498 dated 22nd December 2008 from the date he was taken into custody. He was released on bail on 01st August 2009 and submitted his joining on 2nd August 2009. Thereafter, it was decided to release him from suspension with effect from 2nd August 2009 in the light of Rule 99 of the Service Code. Thereafter, by the impugned order at Annexure-6, the petitioner was once again placed under suspension under Rule 100 of the Service Code with effect from 2nd August 2009 on which date he joined after release on bail in retrospective manner. This order of suspension therefore, so far as it relates to its retrospective operation from the date earlier to the date of passing of the order i.e. 10th October 2009, is in teeth of the well settled law. So far as the question of power to suspend an employee with retrospective effect under Rule 100 of the Service Code is concerned, this issue has been well settled by the Division Bench of the Patna High Court in the case of Bachcho Lal Das (Supra). Para-9 of the said judgment deals with the said question and also relies upon another judgment passed in CWJC No. 1861/1980 whereby such order of suspension passed with retrospective effective, was quashed. Respondents however, perhaps realizing their mistake, modified the order of suspension passed on 10th October 2009 by order contained at Annexure-11 dated 9th December 2009 by making the order effective from the date of issuance of the earlier order (Annexure-6) i.e. 10th October 2009. The petitioner however also sought to challenge the order dated 9th December 2009. However, such submission cannot be accepted that the order of suspension issued on 10th October 2009, so far as it operates prospectively from the date of issuance of the order i.e. 10th October 2009, suffers from any infirmity in the light of the provision under Rule 100 of the Service Code as also what has been held by the Division Bench in its judgment rendered in the case of Bachcho Lal Das (Supra). The order at Annexure-11 dated 9th December 2009 only clarified/modified the earlier order by making it effective from the date of issuance of the order dated 10th October 2009 and not from the retrospective date. In such circumstances therefore, once the respondent have themselves chosen to correct the earlier order and make it prospective from the date of its issuance, the order at Annexure-11 does not require any interference in the totality of the facts and circumstances. The earlier order, so far as it was operating retrospectively was not proper in the eye of law, but after issuance of the order dated 9th December 2009, whereby it has been corrected and modified, therefore, requires no interference in the instant writ application. Accordingly, it is dismissed. I.A. No. 7051/2013 also stands disposed of. However, if the petitioner is entitled to any consequential benefit because of the modified order dated 9th December 2009 (Annexure-11), respondent should consider the same in accordance with law.