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Nagen Hembrom Vs The State of Jharkhand

Writ Petition (S) No. 3429 of 2013

Court: Jharkhand High Court

Date of Decision: Nov. 11, 2013

Citation: (2014) 1 JLJR 64

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: Rajeeva Sharma, for the Appellant; Deepak Kr. Prasad, J.C. to G.P. III, 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 and the petitioner was transferred to Jamjori Panchayat in Littipara Block, District-Pakur. On 28.06.2012, a show-cause

notice was issued to the petitioner on the allegation that 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. 9 & 10 of the counter-affidavit are extracted below:

9. That in reply to the statement made in para-8 to 11 of the writ application, it is 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 Shanker Pramanik. After getting such enquiry report and having found the petitioner''s involvement in the said bungling the

answering 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 middleman, the said Shankar Pramanik and for which First Information Reports being Littipara P.S. Case No. 27

& 28 of 2012 dated 10.05.2012 have been lodged criminal case has been initiated.

10. That in reply to the statement made in para-12 to 15 of the writ application, it is stated and submitted that those are matter of records, hence

quires 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 Magistrates. 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, Shanker 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.