(2014) 12 JH CK 0025

Jharkhand High Court

Case No: W.P. (S) No. 2559 of 2008

Ashok Kumar Singh		APPELLANT
	Vs	
The State of Jharkhand		RESPONDENT

Date of Decision: Dec. 2, 2014

Citation: (2015) 1 JLJR 662

Hon'ble Judges: Sujit Narayan Prasad, J

Bench: Single Bench

Advocate: Anil Kumar Sinha, Sr. Advocate and Rahul Kumar, Advocate for the Appellant

Judgement

Sujit Narayan Prasad, J.
The petitioner has preferred the instant writ petition challenging the office order as contained in Memo No. 316 dated 2.4.2008 issued under the signature of District Superintendent of Education, Singbhum East at Jamshedpur by which he has been dismissed from service.

2. The brief facts of the case as has been pleaded by the writ petitioner is that the petitioner had joined his service on 7.3.1983 as a B.Sc. Trained Science Teacher and after being posted from one place to another he was transferred and posted to Balak Middle School, Jugsalai, Jamshedpur on 19.9.2001.

After transfer of the headmistress of the said school the petitioner has been made acting headmaster of the said school with effect from 26.7.2006. The petitioner has been served with a letter No. 909 dated 9.7.2007 issued by the Executive Magistrate, Dhalbhum, Jamshedpur, informing him that one lady assistant teacher of the said school had lodged a complaint against him for using unparliamentary language (Annexure-1) and as such, the petitioner was directed to appear on 13.7.2007 in the office of Executive Magistrate. Accordingly, the petitioner had appeared before the Executive Magistrate on the date fixed. The petitioner denied entire allegation levelled against him in the complaint, however he was suspended by the order of District Superintendent of Education, Singbhum East, Jamshedpur, vide memo No.

1530 dated 31.7.2007.

And secondly the petitioner was again served with letter No. 992 dated 24.7.2007 to submit his explanation regarding a short message allegedly sent on 23.2.2007 through the mobile using derogatory words. After submission of reply by the petitioner when it was found not satisfactory a charge sheet was issued vide memo No. 1601 dated 06.8.2007 in terms thereof the petitioner has filed his reply, denying the entire allegations. Thereafter, the duly appointed inquiry officer has submitted his report, finding the charges proved against the petitioner. The disciplinary authority has accepted the said finding of the inquiry officer and imposed a punishment of dismissal from service vide order dated 2.4.2008.

The order of dismissal has been challenged by the petitioner on the ground that the reply to the second show cause notice given by the petitioner is not at all been considered by the disciplinary authority and the second point has been raised by the senior counsel appearing on behalf of petitioner that the complainant has already been transferred on 22.6.2007, vide Annexure 3, annexed to the writ petition and as such it is incorrect to allege against the petitioner that he has misbehaved with the said lady teacher, on the basis of which the complaint has been lodged by her on 28.6.2007.

The main emphasis has been given by the learned Senior counsel appearing on behalf of petitioner that when the petitioner has denied the entire allegation levelled against him by virtue of reply to the second show cause notice it was incumbent upon the disciplinary authority to consider the same but it has not been considered and without applying its mind in the mechanical manner the order of dismissal has been passed by the disciplinary authority.

3. The respondent-State has filed counter-affidavit supporting the impugned order, stating in detail that there is no infirmity in the impugned order and it has been argued on behalf of counsel for the respondent that since the inquiry officer has found the charges proved against the petitioner hence, there was no need to write a detailed judgment by him.

4. Heard counsel for the parties.

5. The main argument advanced on behalf of learned Senior counsel appearing on behalf of petitioner is that the disciplinary authority has not considered the reply given by the petitioner in terms of second show cause notice and as such the impugned order of dismissal is bad in the eye of law.

To appreciate the arguments advanced on behalf of learned Senior counsel it is necessary to deal with the findings given by the inquiry officer and from perusal of the same it appears that the petitioner himself has admitted that the unparliamentary words which is very serious assassining character of a woman have been sent through SMS from his mobile number i.e. 0919035927723 as would be

apparent from the first page of inquiry report annexed to the writ petition.

Further it has been argued on behalf of petitioner that above mentioned plea has specifically been denied by the petitioner in his reply submitted by him in terms of the second show cause notice, and since it has not been considered by the disciplinary authority hence, order of dismissal is absolutely incorrect and improper.

In support of his argument the learned senior counsel for the petitioner has placed reliance upon various judgments reported in The State of Jharkhand, The Secretary and The Deputy Secretary, Personal, Administrative Reforms and Rajbhasa Department, Government of Jharkhand Vs. Jaishree Jha, but the said judgments are not applicable in the facts and circumstances of the case in view of the fact that in the instant case it is the admission on part of the petitioner that the message was sent from his mobile phone. Since there is specific admission of petitioner this effect before the inquiry officer, even if subsequently he denies the same, it cannot be considered in view of the admission made earlier, while in all the judgments cited the ratio has been laid down with respect to providing reasonable and adequate opportunity to the delinquent employee.

From the facts of the instant case it appears that the petitioner has been given sufficient and adequate opportunity to defend himself in course of enquiry and this is not the case of the petitioner hence, these judgments are not applicable in the facts and circumstances of the instant case.

6. That since the petitioner has admitted the fact that the message which was sent to the lady teacher from the mobile phone belongs to him and as such in view of the specific admission on part of the petitioner in this regard it is not necessary that the disciplinary authority should give a detailed judgment.

In this regard, as has been held by the Hon''ble Apex Court in the case of State of U.P. Vs. Harendra Kumar reported in 2004(13)SCC 117, where at para 8 it has been laid down that:

"when the disciplinary authority agreed with the finding drawn by the inquiry officer he need not to write a detailed judgment".

Here, after perusal of the impugned order the disciplinary authority has stated while passing the order of dismissal that he has perused the finding given by the inquiry officer, and after close scrutiny of the same found himself in agreement with the report of the inquiry officer, which is sufficient requirement of law.

Further as per the rule laid down by Hon''ble Apex Court in the case of M.V. Bijlani Vs. Union of India (UOI) and Others, , it has been held at para 25 that:--

" ---------- Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e.

beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures."

The same ratio had been followed by the Hon''ble Apex Court in the case of Nirmala J. Jhala Vs. State of Gujarat and Another, wherein at Para 17, it has been held that:

" ---------- The disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done".

7. Here in the instant case the petitioner has admitted that the number of mobile phone from which the messages have been sent belongs to him. Thus, from the conduct of the petitioner even the veracity of the first complaint can not be disbelieved, as such, the inquiry officer had rightly reached to conclusion proving the charge against the petitioner. Hence, considering this aspect of the matter the inquiry officer has found the charges proved against him which has been accepted by the disciplinary authority and punishment of dismissal from service has been imposed after appreciating the evidences. Considering the nature of allegation which is serious as such I find no infirmity in the order of dismissal.

8. Hence, this writ petition is devoid of merit. Accordingly, it is dismissed.