

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.2100 of 2019

Anil Kumar

..... Petitioner

Versus

The Chief Information Commissioner, State of Jharkhand, Ranchi & Ors.

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Abhay Prakash, Advocate

For the Respondent No.2 : Mr. Manoj Tandon (AAG)

: Mr. Ranesh Anand (A.C. to A.A.G.)

For the Respondent : Mr. Sanjay Piprawall, (Information Commission)

05/Dated 19th August, 2019

It has been pointed by Mr. Sanjay Piprawall, learned counsel appearing for the Information Commission, has submitted that the State Information Commission is not impleaded as party rather the Chief Information Commissioner, State of Jharkhand has been impleaded as respondent No.1.

Upon which, Mr. Abhay Prakash, learned counsel for the petitioner submits that the same has occurred due to inadvertence and bona fide mistake, therefore, the leave may be granted to rectify it in course of the day.

In view thereof, learned counsel for the petitioner is directed to make necessary correction in the nomenclature of respondent No.1 as referred above in course of the day.

The order dated 06.02.2019 passed in Appeal Case No.1402/2017 by the Information Commissioner vide Memo No.2335 dated 14.02.2019, by which, the penalty of Rs.25,000/- has been imposed in exercise of power conferred under Section 20 (1) of the Right to Information Act, 2005 (hereinafter referred to as the Act, 2005) and recommendation for initiation of a departmental proceeding as stipulated under sub-section (2) to Section 20 of the Right to Information Act, 2005 has been made.

Mr. Abhay Prakash, learned counsel for the petitioner has given much emphasis in advancing his argument that before taking recourse of the provision of Section 20(1) of the Act, 2005 which provides that before imposing the penalty of Rs.25,000/- the procedure laid down under Section 20 (1) of the Act, 2005 an opportunity of hearing is to be provided, has not followed.

So far as the question for initiation of departmental proceeding which is to be

recommended within the provision of sub-section (2) to Section 20 of the Act, 2005 it would be evident from the tenure of order that it is not by way of recommendation rather it is by way of a direction by directing the controlling authority to initiate a departmental proceeding and after taking action, the same be communicated to the Commission, therefore, both the actions i.e. the imposition of penalty as also the direction to be initiated the departmental proceeding is not in consonance with the statutory provision as contained thereunder.

Mr. Sanjay Piprawall, learned counsel for the respondent sought for time to seek instruction and if required to file affidavit.

Mr. Manoj Tandon, learned Additional Advocate General appearing for the State of Jharkhand, has submitted that the State since is the formal party and as such no affidavit would be required to be filed at this stage.

In view thereof, the matter requires for consideration.

Let notice be issued upon the respondent No.4 under both registered as well as ordinary process for which requisites etc. to be filed within a week.

List this case on 26.09.2019.

Ad-Interim Relief:

It has been submitted by the learned counsel for the petitioner that the order dated 06.02.2019 (impugned) the recovery has been directed to be made by way of five equal installment by making recovery to the tune of Rs.5,000/- each from the salary of the petitioner as also the direction to initiate a departmental proceeding which according to the petitioner is not in consonance with the statutory provision since no opportunity of hearing has been provided before imposition of penalty of Rs.25,000/- as also the commission can recommend to initiate a departmental proceeding but as would appear that there is direction to initiate a departmental proceeding has been followed of and communicated to the commission, therefore, if the interim order of stay the operation dated 06.02.2019 has not been passed, the petitioner will suffer irreparable loss and injury.

This Court after hearing the learned counsel for the petitioner and looking to the provision as contained under the provision of Section 20(1) of the Act, 2005 wherein the provision has been made that before imposing penalty of Rs.25,000/- an opportunity of hearing has been provided but prima facie appears that no opportunity of hearing has been provided before

imposing such penalty and further sub-section (2) to Section 20 of the Act, 2005 provides power to the Commission to recommend the initiation of a departmental proceeding but the order impugned does suggest that it is not merely recommendation that a direction upon the controlling authority to initiate a departmental proceeding and communicate the follow of action taken in pursuance to the said departmental proceeding to the Commission, therefore, the petitioner has got prima facie case and since it is the case of recovery as also the initiation of departmental proceeding, therefore, balance of convenience also lies in favour of the petitioner and if the impugned order would not be stayed, the petitioner will suffer irreparable loss and injury.

In view thereof, the operation and implementation of order dated 06.02.2019 so far as it relates to recovery of amount of penalty to the tune of Rs.25,000/- is kept in abeyance till the next date.

(Sujit Narayan Prasad, J.)

Madhav