
(2009) 04 JH CK 0063
In the Jharkhand High Court
Case No : Writ Petition (S) No. 516 of 2003

Arun Kumar Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Bihar (Now Jharkhand) Service Code, 2001 — Rule 11, 217
Constitution of India, 1950 — Article 309

Citation : (2009) 04 JH CK 0063

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Dilip Kumar Prasad, for the Appellant; Ramesh Kumar Singh, G.P.-IV, for the Respondent

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred mainly for the reason that despite the valid grant of study leave salary for the period running from 2nd February, 2002 to 1st July, 2003 has not been paid. It is submitted by learned Counsel for the petitioner that neither any stipend nor other benefits nor salary payable under the relevant rules, has been paid to the petitioner and, therefore, the present petition has been preferred for getting salary in accordance with law for the period running from 2nd February, 2002 to 1st July, 2003.

2. It is vehemently submitted by the learned Counsel for the petitioner that the petitioner was serving as Ayurvedic Medical Officer in State Dispensary, Chaibasa, Singhbhum (West). He had applied for study leave, which was validly granted for the aforesaid period, but the salary for that study leave period, has not been paid. It is also submitted by the learned Counsel for the petitioner that looking to the counter affidavit, filed by the respondents in reply, especially paragraph 7 thereof, petitioner is entitled for salary as stated in Rule 217 of Bihar (Now Jharkhand) Service Code, 2001 enacted under the proviso to Article 309 of the Constitution of India. Petitioner is entitled for the salary as stated therein.

Even admitted salary under Rule 217 of the Code, 2001, is also not paid. Thus, arbitrarily, the concerned officer of the respondent-State has withhold the salary which is even admitted in the counter affidavit, filed by the concerned respondent and, therefore, payable amount under Rule 217 of the Code, 2001, ought to be paid with immediate effect and with necessary interest, It is also submitted by learned Counsel for the petitioner that it has been brought to the kind notice of respondents by the interlocutory application bearing I.A. No. 3123 of 2006 that two other similarly situated candidates" payment of salary has been made for the study leave period.

3. It is submitted by the learned Counsel for the respondent Nos. 1 to 5 that one illegality can not support another. If somebody paid *dehors* under Rule 217 of the Code, 2001, petitioner can never canvass an argument that if Mr. X is paid *dehors* the rule, petitioner is also entitled for anauthorised payment under equity. In view of this fact, if the payment is made *dehors* the rules of the Code, 2001, petitioner is not entitled to claim equity, in illegality. Hence, petitioner is not entitled for the full salary for the study leave period, but the petitioner is entitled for the salary as per the calculation shown under Rule 217 of the Code, 2001.

4. It is also submitted by the learned Counsel for respondent Nos. 1 to 5 that the petitioner is not entitled for the payment of the regular salary during the period for which study leave was granted, therefore, the tall claim of the petitioner for getting full salary is *dehors* the rules of the Code, 2001, especially under Rule 217 thereof. Nonetheless, he is entitled for salary for study leave period as per the formula given under Rule 217 of the Code, 2001 enacted under the proviso of 309 of the Constitution of India. It is also submitted by the learned Counsel for respondent Nos. 1 to 5 that as per Rule 217 of the Code, 2001, petitioner is entitled for half average pay and as per Rule 11 of the Code, 2001, average pay means average monthly pay earned during the 12 complete months immediately preceding the month in which the petitioner was given study leave salary. Thus, the petitioner is not entitled for the full salary during the study leave period.

5. Having heard the learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that the petitioner was working as Ayurvedic Medical Officer in State Ayurvedic Dispensary, Chaibasa, Singhbhum (West). He had applied for study leave, which was validly granted for the period from 2nd February, 2002 to 1st July, 2003. As per Rule 217, it appears that the present petitioner is entitled for half the average pay for the period for which the study leave was granted under Rule 217 of the Code, 2001, which reads as under:

Study leave will count as service for promotion and pension but not for leave. It will not effect any leave which may already be due to a Government servant; it will count as extra leave on half average pay and will not be taken into account in reckoning the aggregate amount of leave on half average pay taken by the Government servant towards the maximum period admissible under these rules.

(emphasis supplied)

Thus, from the above rule, petitioner is entitled for half average pay. As per Rule 11 of the Code, 2001, average pay is defined. Rule 11 of the Code, 2001 reads as under:

Average pay means the average monthly pay earned during the twelve complete months immediately preceding the month in which the event occurs which necessitates the calculation of average pay. If no pay was earned during a portion of the aforesaid twelve months such portion shall be excluded from the calculation, and average pay shall be determined by the pay earned during the remaining portion.

Thus, from conjoint reading of the aforesaid rules, viz. Rule 217 and Rule 11, it appears that petitioner is entitled for half average pay, which has admittedly not paid to the petitioner for the period running from 2nd February, 2002 to 1st July, 2003.

6 It also appears from paragraph 7 of the counter affidavit, filed by respondent Nos. 1 to 3, that petitioner is entitled for the salary, which is pointed out in the aforesaid rules especially Rule 217 of the Code, 2001.

7 Thus, for no valid reason, the salary payable as per Rule 217 has been detained by the concerned respondents. In view of this fact, I hereby direct the respondents to make the payment of salary as per the method and calculation shown in Rule 217 of the Code, 2001 for the period running from 2nd February, 2002 to 1st July, 2003 with immediate effect and not later than 30 days from the date of receipt of the order of this Court along with interest @ 4% per annum. This amount will be paid initially, by the State to the petitioner and I hereby direct respondent No. 2 to hold an enquiry that because of whose lethargic and negligent approach, this admitted amount as per the counter affidavit especially looking to the paragraph 7 thereof, is not paid to the petitioner and upon holding the enquiry, the amount of the interest, will be deducted from the salary of the erring officer(s). The enquiry process will be completed within a period of six months from the date of receipt of the copy of the order of this Court and I hereby also direct respondent No. 2 to report this Court upon completion of enquiry.

8 The petition is allowed to the aforesaid extent and with the aforesaid directions.