

(2003) 07 JH CK 0009
In the Jharkhand High Court
Case No : WP (S) No. 3234 of 2003

Chandra Kant Jha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Bihar Pension Rules, 1950 — Rule 46
Constitution of India, 1950 — Article 226

Citation : (2004) 4 JCR 78

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Dhananjay Kumar Dubey, for the Appellant; M. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties. The petitioner has prayed for quashing that part of the order dated 23.2.2004 (Annexure-6) by which pension and gratuity has been refused in view of the Rule 46 of the Bihar Pension Rules, 1950.

2. It appears that petitioner was removed from his service with effect from 28.11.1986 (Annexure-1) on the ground that petitioner was found guilty in two departmental enquiries for negligence of duty, disobedience of the orders of the superior officers, dereliction of duty and assaulting the superior officer, and also theft of Government property and, therefore, he can not remain in Government service. Petitioner challenged order of his removal in Writ Petition No. 6650 of 1998. The said writ petition was disposed of on 1.11.1999, concluding as follows :

"From the fact aforesaid, it will be evident that the petitioner was removed from service on 5.11.1987 which order become final. Said removal was made because of allegation of mis-conduct, dereliction of duty and insubordination. In the aforesaid circumstances, even if the petitioner was acquitted in the criminal case which related to assault on BDO, there was no occasion for the authorities to review the order of removal.

So far as quantum of punishment is concerned, the matter can be looked into by the competent authority. This Court cannot interfere in respect of quantum of punishment that too after 12 years of order of removal.

There being no merit, this writ petition is dismissed."

3. Petitioner then preferred LPA No. 1515 of 1999 which was also dismissed. Then, petitioner filed writ petition being WP (S) No. 6593 of 2003 with a prayer to reconsider his case with regard to quantum of punishment imposed on him, i.e., removal from service. The said writ petition was disposed of on 7.1.2004 refusing to entertain the said prayer for reconsideration of the quantum of punishment.

4. Learned counsel for the petitioner relies on the judgment dated 29.1.1985 -1985 PLJR 446 and submits that petitioner has not been dismissed from his service, rather his service has simply been terminated and, therefore, in view of the said judgment petitioner is entitled to pension and gratuity.

5. It appears from the said judgment that against the order of termination, petitioner of that case filed a writ petition which was dismissed with observation that "apprehension of the petitioner that the order will adversely affect payment of his gratuity and other benefits had no foundation". In spite of the said observation, petitioner of that case was not paid his pension and gratuity. Then he filed the said writ petition. It is held that "even after holding a Government servant to be guilty of misconduct, the State may not dismiss or remove him from service, it may only terminate his service". It was found in the said case that services of the petitioner therein was simply terminated and it was not a case of dismissal or removal of service and, therefore, he was entitled to pension and gratuity.

6. The facts and circumstances noted above clearly show that the said case is of no help to the petitioner. In the present case on the basis of charges proved against petitioner his services were terminated with effect from 28.11.1986 and he was removed from service, as he was not found fit to remain in Government service by the order dated 4.12.1986 (Annexure-1). The said order was affirmed upto the stage of Letters Patent Appeal. The petitioner himself treated the said order to be an order of dismissal/removal from service. The substance is to be seen, not the terminology. This is not a case of termination simpliciter.

7. In the facts and circumstances, in my opinion, no relief can be granted to the petitioner.

8. However, so far as the amount of Provident Fund and Group Insurance are concerned, that will be dealt with as per the order dated 23.2.2004 (Annexure-6). Learned counsel for the petitioner states that petitioner has submitted his papers and completed all formalities in terms of the said order dated 23.2.2004. If that be so, the said amount should be paid to the petitioner in accordance with law within six weeks from the receipt of a copy of this order.

9. In the result, this writ petition is dismissed with the aforesaid observation/direction.