

(2012) 06 JH CK 0087
In the Jharkhand High Court
Case No : Writ Petition (S) No. 375 of 2006

Deo Kumar Ram

APPELLANT

Vs

Ranchi Municipal Corporation, Ranchi and Others

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324, 326

Citation : (2012) 4 JCR 340

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Baban Lal and Ashok Kumar Sinha, for the Appellant; R.R. Nath and Rajesh Lala, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.—The present petition is filed by the original petitioner-Deo Kumar Ram, seeking writ of mandamus commanding the respondents to release payment of full salary and other admissible allowances including revision of pay for the period the petitioner has remained under suspension with effect from 14th July, 1995 to 19th April, 2004. The brief facts of the present case, inter alia, are that the petitioner was working as an employee of Ranchi Municipal Corporation, Ranchi and was working as Kup Sodhak (Sweeper); Sushila Devi wife of the petitioner Deo Kumar Ram (newly substituted petitioner) has filed a criminal complaint against the original petitioner under Sections 324, 326 and 307 of the Indian Penal Code. Consequently, the petitioner was arrested and remained in judicial custody with effect from 11th January, 1995 to 17th January, 1995; on 13th July, 1995 Ranchi Municipal Corporation has issued the impugned order, placing the petitioner under suspension and informing him for initiation of disciplinary proceeding against him and asking him to show cause. The petitioner was acquitted from the charges by the 5th Additional Judicial Commissioner, Fast Track Court, Ranchi vide Judgment dated 21st January, 2004. Accordingly, Ranchi Municipal Corporation has revoked the suspension order vide order dated 16th

April, 2004 and the petitioner was allowed to join his duty. The petitioner has joined his duty on 20th April, 2004. By way of representation dated 4th April, 2011, the petitioner has asked the authorities to release his full salary and allowances during the period he remained under suspension from the period i.e. 14th July, 1995 to 19th April, 2004. However, the same was denied by the Ranchi Municipal Corporation, therefore, the present writ petition.

2. I have heard Mr. Baban Lal, learned senior counsel appearing on behalf of the petitioner and Mr. Rajesh Lala, learned counsel for the Ranchi Municipal Corporation-respondents and carefully perused the records.

3. Mr. Rajesh Lala, learned counsel appearing on behalf of the Ranchi Municipal Corporation-respondents has vehemently argued that since the petitioner was acquitted from the criminal case giving him benefit of doubts, therefore, the petitioner is not entitled for full salary and other allowances during the period he remained under suspension. Learned counsel has placed reliance on a Division Bench judgment of the Patna High Court in the case of Sheo Prasad v. The State of Bihar and others, 1972 PLJR 602. In reply, Mr. Baban Lal, learned senior counsel has argued that in the present case, the petitioner was placed under suspension contemplating departmental enquiry and no enquiry was ever held and the petitioner was never found guilty in the disciplinary enquiry, therefore, the judgment in the case of Sheo Prasad (supra) is not applicable in the present case. Learned senior counsel has placed reliance on the Judgment of this Court in the case of Pratap Narayan Singh v. State of Jharkhand and others, 2001 (2) JLJR 444. Prasenjit Ghosh v. The State of Jharkhand and others. 2004 LAB IC 3353 and on the judgments of Apex Court in the case of Brahma Chandra Gupta Vs. Union of India (UOI),

4. In the case of Pratap Narayan Singh (supra), the learned single Judge has observed as under :

11. The petitioner having been acquitted in the criminal proceeding and the departmental proceeding and there being no laches on his part is entitled for full salary for the period of suspension.

12. The respondents are directed to fix the pay of the petitioner accordingly taking into consideration the revision of pay and after adjustment of subsistence allowance already paid and to release the arrears within three months from the date of receipt/production of a copy of this order.

5. In the case of Prasenjit Ghosh (supra), the learned single Judge of this Court has observed as under :

It is clear that if the employee is fully exonerated from the charges, he shall be entitled" to full pay and allowances which he would have been entitled had he not been dismissed, removed or suspended. From perusal of the judgment of acquittal passed by the Sessions Court it appears that the petitioner was not found guilty of the charges levelled against him and the prosecution failed to

prove the case against the petitioner. In my considered opinion, therefore, the impugned order revoking the suspension of the petitioner only w.e.f. 25-8-1999 when the judgment in the criminal case was delivered, is wholly illegal and against law, further, in my considered view, the principle of "no work no pay" will also not apply in the facts and circumstances of the present case. Admittedly, because of the order of suspension, the petitioner was not allowed to discharge his duty. It is, therefore, held that the petitioner would be entitled to full salary and allowances for the entire period of suspension.

6. The Hon''ble Apex Court in the case of Brahma Chandra Gupta (supra) has held that if the employee has already retired on superannuation he must receive a measure of socio-economic justice; keeping in view the facts of the case that he was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted.

7. In the present case, this is an admitted fact that the petitioner was placed under suspension in contemplation of departmental enquiry. He was not even found guilty in the enquiry and was acquitted by the criminal Court and thereafter his suspension order was revoked and he was allowed to resume his duty. Therefore, the petitioner is entitled for full salary and other allowances during the period he was under suspension. Since the original petitioner died during the pendency of the writ petition, therefore, his wife is entitled to receive all retiral benefits along with entire salary and allowances for the period the petitioner remained under suspension. This writ petition is allowed accordingly. Respondents are directed to release the full salary, other admissible allowances, revision of pay, if any, for the period original petitioner remained under suspension after deducting the amount already paid within 90 days from today to the petitioner.