

(2022) 07 JH CK 0007

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3926 Of 2014

Dr. Kishori Raman Prasad Sinha

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 11-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Civil Services (Classification Control And Appeal) Rules, 1930 — Rule 55

Jharkhand Pension Rules, 2000 — Rule 139 (b)

Citation : (2022) 07 JH CK 0007

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : J.K. Pasari, Subham Mishra, Binit Chandra, J.C.

Final Decision : Dismissed

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. J.K. Pasari, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Subham Mishra, learned counsel appearing on behalf of the State of Jharkhand.
3. Heard Mr. Binit Chandra, learned counsel appearing on behalf of the State of Bihar.
4. This writ petition has been filed for the following relief:

"For quashing of the notification dated 08.10.2013 vide memo no.598 (18) whereby and whereunder, the concerned respondents have been pleased to pass the order against the petitioner that a punishment of 0% (Zero Percent) Pension is awarded to the petitioner for the departmental proceeding which was initiated vide resolution dated 1.2.2008 i.e. after retirement of the petitioner and the petitioner further prays that all the retirement benefit of the petitioner like provident fund, gratuity, pension, leave encashment etc. should be paid to the

petitioner with interest at the rate of 18% per annum from the date when it becomes due and the petitioner further prays that the salary from the year 1989 till his retirement i.e. 31.10.2007 should be paid to the petitioner with interest at the rate of 18% per annum and the petitioner further prays that he should be given all the benefits of the service including A.C.P since it was due to the petitioner since a long time and all consequential benefits of the services after quashing of the notification dated 8.10.2013.”

Argument of the Petitioner

5. Learned counsel for the petitioner submits that the following points arise for consideration in the present case:

a) While referring to the impugned order of punishment as contained in Annexure – 19, he submits that the same is not a reasoned order and the show cause filed by the petitioner before the Enquiry Officer as contained in Annexure – 16 has not been considered. Learned counsel has referred to a judgment passed by this Court reported in 2014 (1) JLJR 454 (The State of Jharkhand and Ors. Vs. Jaishree Jha) to submit that the order of punishment passed by the disciplinary authority should be a reasoned order.

b) The learned counsel further submits that no finding of deliberate or intentional absence has been recorded in the impugned order as contained in Annexure – 19 and in absence of such finding, the impugned order of punishment is fit to be set aside. Learned counsel has relied upon a judgment reported in 2012 (4) JLJR 300 (Pandav Kumar Vs. Union of India and Ors.).

c) Learned counsel further submits that as per the allegation, the petitioner remained absent after 1993 and the proceeding was initiated against him in 2008 after his retirement and therefore the entire proceeding is fit to be set aside being suffering from laches and delay on the part of the respondents. Learned counsel submits that the action, if any, was required to be taken against the petitioner within reasonable period and no such proceeding could have been initiated after a long gap. The learned counsel has relied upon a judgment passed by Hon'ble Supreme Court reported in 1990 Supp (1) SCC 738 (The State of Madhya Pradesh Vs. Bani Singh and Ors).

6. Learned counsel also submits that without prejudice to the aforesaid merit of the case as per the order of punishment, the petitioner has been awarded zero percent pension, but so far as other admissible claim of the petitioner on account of Provident Fund, gratuity etc. are concerned, the same has also not been paid to him. The learned counsel submits that admittedly the petitioner has worked for a period from 1973 to Feb, 1993.

7. During the course of argument on a specific query being made by this Court, it is not in dispute from the side of the petitioner that the enquiry report has not been placed on record and it is not the case of the petitioner that the petitioner was never served with the enquiry report. Further, it is also not in dispute from

the petitioner that in spite of receipt of 2nd show cause, the petitioner did not file any reply to the same.

Arguments of the Respondents

8. Learned counsel for the respondents, on the other hand, has submitted that the petitioner has taken leave for period from 04.02.1993 to 06.02.1993 and thereafter on 08.02.1993 to 10.02.1993 on the ground of illness of his mother. Thereafter, during the period from 11.02.1993 to 22.03.1994, he continuously informed the respondents for extension of leave and thereafter he joined on 10.05.1994 at Purnea, but the authority at Purnea did not allow him to join as the leave period was beyond six months. Thereafter there was complete silence from the side of the petitioner and as per Annexures – 4 and 5, the petitioner visited the office of the concerned respondent on 20.04.1999 and 25.01.2000. State of Jharkhand was created w.e.f. 15.11.2000. As per the case of the petitioner, he came to know that he was given Jharkhand Cadre through newspaper and he informed the respondent State of Jharkhand regarding his joining on 25.11.2006, but his joining was not accepted as charge report of his earlier place of posting was not signed. Thereafter, ultimately the petitioner attained the age of superannuation on 31.10.2007. However, on 01.02.2008, a resolution was taken to start a departmental proceeding against the petitioner for his unauthorized absence for the period from 04.02.1993 to 24.11.2006. As per Annexure – 14, the petitioner was directed to file a show cause by 16.06.2011 and the petitioner filed his show cause as contained in Annexure – 15 on 24.10.2011. After the Enquiry, the petitioner was issued the second show cause notice to which the petitioner did not respond and ultimately the impugned order dated 08.10.2013 as contained in Annexure – 19 was passed. The learned counsel submits that there is no illegality or irregularity in the matter of departmental proceedings against the petitioner and there being no perversity or illegality in the impugned proceedings or impugned order, the petitioner is not entitled to any relief. He also submits that so far other claim of the petitioner regarding provident fund, gratuity and the arrears of pay during the period he worked is concerned, the same can be considered by respondent no.2 and, if any, amount is found admissible, the same can be paid as per law.

Findings

9. After hearing the learned counsel for the parties, this Court finds that it is not in dispute that the petitioner was appointed as Medical Officer as back as in the year 1973 and lastly, he was posted in the district of Purnia where he worked as Medical Officer at Additional Primary Health Centre, Bhutaha Sikti, Purnia. On 03.02.1993, petitioner applied for leave for a period from 04.02.1993 to 06.02.1993 and from 08.02.1993 and 10.02.1993 on the ground of illness of his mother. Thereafter, the petitioner did not join his duty and continuously informed the concerned respondents for extension of leave stating that his mother was ill. After expiry of about 15 months, the petitioner gave his joining at Purnea in the year 1994, but the Chief Medical Officer, Purnea did not permit the petitioner to

join as the over stayed period was beyond six months. Thereafter, the petitioner claims to have visited the office of concerned respondents, but no positive reply was given to him and in support of this, the petitioner has filed copies of letter dated 20.04.1999 (Annexure – 4) and 25.01.2000 (Annexure – 5) for joining. It is further the specific case of the petitioner that he came to know from newspaper that he was allocated Jharkhand cadre and consequently he gave his joining on 25.11.06 but was not allowed to join in absence of required charge report and ultimately, he attained the age of superannuation on 31.10.2007.

10. Admittedly, a departmental proceeding was initiated by the State of Jharkhand by issuing "Prapatra Ka" dated 01.02.2008 making allegation of absence from duty from 04.02.1993 to 24.11.2006 and the material mentioned against the petitioner was his service record itself. The proceedings were under Rule 55 of the Civil services (Classification, Control and Appeal) Rules, 1930 and enquiry officer was also appointed. As per para 31 of the writ petition, the petitioner filed his show cause on 21.11.2011 and requested to consider the period of absence for the period from 04.02.1993 to 24.11.2006 as leave period. Thus, the long absence of the petitioner from 04.02.1993 to 24.11.2006 is not in dispute.

11. It is further not in dispute that after enquiry report was submitted, 2nd show cause notice was issued to the petitioner vide letter dated 20.03.2013 (Annexure – 17) asking the petitioner to show cause as to why suitable action be not taken against the petitioner under Rule 139 (b) of the Pension Rules to which the petitioner did not respond. A reminder was also issued vide letter dated 17.05.2013 to file reply to 2nd show cause and again the petitioner did not respond. Ultimately, the respondent authority passed the order of punishment dated 08.10.2013 (Annexure – 19). The petitioner having not raised any grievance in connection with the departmental proceedings pursuant to issuance of 2nd show cause notice by not filing any response to the same, cannot be permitted to raised any such plea for the first time before this Court in writ proceedings.

12. The order of punishment reveals that the disciplinary authority has considered the enquiry report which recorded that the materials produced by the petitioner for long absence for a period of 14 years, after taking casual leave from 04.02.1993 to 11.02.1993 and remaining absent till 24.11.2006, was not acceptable. It was also recorded that if any disciplinary proceeding would have been initiated by the Health Department, Patna at the relevant point of time, the petitioner would have been dismissed. The disciplinary authority recorded that the allegations against the petitioner was proved and in terms of Rule 139 (b) of Jharkhand Pension Rules directed for punishment of zero pension to the petitioner.

13. This Court finds that the impugned order is a well-reasoned order considering the findings of the enquiry officer and on the face of the undisputed fact of long absence of the petitioner for more than 14 years, no case for interference has

been made out by the petitioner under Article 226 of the Constitution of India.

14. The argument of the petitioner that the show cause filed by the petitioner before the enquiry officer as contained in Annexure- 16 has not been considered is also devoid of any merit, in as much as, the enquiry officer, as is apparent from the impugned order, has given a finding that the explanation furnished by the petitioner regarding his long absence of 14 years was not acceptable. The impugned order of punishment reflects application of mind and is a reasoned order upon the consideration of findings of the enquiry officer. In view of the aforesaid facts and circumstances, the judgment relied upon by the petitioner reported in 2014 (1) JLJR 454 (The State of Jharkhand and Ors. Vs. Jaishree Jha) does not help the petitioner in any manner, particularly, when the period of absence of 14 long years is not in dispute.

15. So far as 2nd argument of the petitioner that there is no finding of deliberate or intentional absence recorded in the impugned order is concerned, such argument is also devoid of any merit. Upon perusal of the impugned order, this Court finds that the disciplinary authority has concurred with the findings of the enquiry officer which as per the impugned order recorded that the explanation furnished by the petitioner for long absence of 14 years is not fit to be accepted and the disciplinary authority accepted the finding of the enquiry report and imposed punishment under Rule 139 (b) of Jharkhand Pension Rules. Thus, once the explanation for absence is rejected, it cannot be said that there is no finding of willful absence from duty. Otherwise also, it is relevant to note that the order of punishment has been passed by exercising power under Rule 139 (b) of Jharkhand Pension Rules which is to be exercised when the service has not been thoroughly satisfactory.

16. Rule 139 of Jharkhand Pension Rules is quoted as under:

"139 (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c)"

17. Upon perusal of Rule 139 (b) of Jharkhand Pension Rules, it is apparent that the same is attracted when service has not been found thoroughly satisfactory. In the instant case, the power to give zero pension has been exercised under Rule 139 (b) and considering the long period of absence of the petitioner which was more than 14 years, the disciplinary authority has duly exercised the power under Rule 139 (b) by holding that the petitioner will be entitled to zero pension and prior to imposing this punishment, 2nd show cause notice was also issued to the petitioner, to which he did not respond.

18. From the writ petition, it appears that after the representation way back as on 10.05.1994 (Annexure – 3), there is only a bald and vague statement from

the side of the petitioner in para 16 that he has been visiting the respondents several times, but did not receive any positive reply. Thereafter next communication from the side of the petitioner is after about 5 years on 20.04.1999 (Annexure – 4) and there is no mention as to what the petitioner did after filing his joining on 10.05.1994 (Annexure- 3) except that he was waiting for a response. However, along with the said letter, the petitioner filed a medical certificate regarding illness of his mother issued on 21.04.1994. The petitioner filed another letter regarding illness of his mother dated 25.01.2000 (Annexure – 5 series) and thereafter again from 25.01.2000 to 23.11.2006, there is complete silence from the side of the petitioner except a bald and vague statement that again that from the year 2000, the petitioner has been visiting the respondents several times. Thus, even from the writ records, this Court finds that there has been no proper explanation from the side of the petitioner for his long absence from duty for a long period of 14 years.

19. Considering the nature of absence of the petitioner and the impugned order having been passed by exercise of power under Rule 139 (b), this Court does not find any illegality or perversity while passing the impugned order of punishment.

20. So far as the 3rd argument of the petitioner regarding the delay and laches on the part of the respondent in initiating the departmental proceeding is concerned, the Court is of the considered view that the absence of the petitioner from duty continued right from the year 1993 and his absence from duty continued till he ultimately gave his joining in the State of Jharkhand on 24.11.2006. Unauthorized absence from duty is a continuing misconduct which came to light of the authorities in the State of Jharkhand only when the petitioner gave his joining upon cadre allocation. Thus, the plea of petitioner that the proceeding initiated against the petitioner suffered from delay and laches on the part of the respondents is devoid of any merit and is accordingly rejected.

21. So far as the judgment passed by Hon'ble Supreme Court reported in 1990 Supp (1) SCC 738 (supra) is concerned, the same does not apply to the facts and circumstances of this case as the cause of action to initiate a proceeding on account of absence from duty continued as admittedly, the petitioner remained absent from duty for a continuous period of more than 14 years.

22. This Court finds that the absence of the petitioner from duty stands admitted in the writ petition itself. There has been complete silence from the side of the petitioner from 10.05.1994 to 20.04.1999 and thereafter from 25.01.2000 to 23.11.2006 except the statement that the petitioner was waiting for response from the department.

23. As a cumulative effect of the aforesaid findings, the present writ petition is hereby dismissed.

24. However, if there is any other dues, which the petitioner is legally entitled to receive as per applicable service rules, notifications, circulars etc., in spite of punishment order of zero pension, the petitioner may approach the respondents

for redressal of such grievance, who may consider the same in accordance with law, subject to verification of the available records.