
(2016) 08 JH CK 0148
In the Jharkhand High Court
Case No : W.P. (S) No. 6713 of 2014

Dr. Rajiv Ranjan

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 JCR 284

Hon'ble Judges : Mr. H.C. Mishra, J.

Bench : Single Bench

Advocate : Mr. D.K. Prasad, and Mr. Anuj Kumar, Advocates, for the Petitioner;
J.C. to G.A, for the Respondent

Final Decision : Dismissed

Judgement

Mr. H.C. Mishra, J. - Heard learned counsel for the petitioner and learned counsel for the respondent State of Jharkhand.

2. Petitioner was working as Medical Officer in Sadar Hospital in Chatra, and he is aggrieved by the fact that he has been denied his salary for certain periods, as claimed by the petitioner.

3. The petitioner had earlier moved this Court in WP(S) No.5139 of 2007, claiming therein that he had not been paid his salary from 25.01.1993 to 14.03.1993, 16.04.2006 to 31.08.2006, 9.11.2006 to 20.11.2006, 1.08.2000 to 14.11.2000, 01.01.2006 to 15.04.2006 and continuously w.e.f. 01.09.2006. The said writ application was disposed of by order dated 23.06.2008 as contained in Annexure?17 to the writ application, whereby the petitioner was directed to file representation before the Commissioner-cum-Secretary, Health, Family Welfare and Medical Education Department, Government of Jharkhand, Ranchi, who was directed to dispose of the representation of the petitioner.

4. The present cause of action arises to the petitioner due to non-payment of his salary from July 2011 to February 2012 and thereafter from February 2013. The

petitioner again moved this Court in WP(S) No.2375 of 2014, which was disposed of by order dated 11.08.2014 as contained in Annexure?5 to the writ application, whereby the petitioner was directed to approach the Civil Surgeon-cum-Chief Medical Officer, Chatra, for redressal of his grievances and the Civil Surgeon-cum-Chief Medical Officer was directed to take a final decision within the period of eight weeks. Pursuant to the direction of this Court as contained in Annexure?5 to the writ application, a detailed order has been passed by the Respondent No.3, Civil Surgeon-cum-Chief Medical Officer, Chatra, as contained in Memo No.1539 dated 10.10.2014, which has been brought on record as Annexure?9 to the writ application. It is this order, which is under challenge in the present writ application.

5. The impugned order as contained in Annexure?9 to the writ application shows that the petitioner has not been paid his salary due to his unauthorized absence from Sadar Hospital, Chatra. An enquiry committee was constituted by the Civil Surgeon-cum-Chief Medical Officer, Chatra, under the Chairmanship of the Deputy Superintendent, Sadar Hospital, Chatra, but the petitioner made allegations against the Members of the Committee. Thereafter, another Committee was also constituted, but the Deputy Superintendent of Sadar Hospital, Chatra, by his letter dated 29.9.2014 alleged that the Members of the Committee were not co-operating in the enquiry, and it was also stated in the said letter that though the petitioner had not marked his attendance in the attendance register, but the petitioner had worked in the hospital.

6. The respondent No.3, Civil Surgeon-cum-Chief Medical Officer, Chatra, found that Deputy Superintendent of Sadar Hospital, Chatra, was giving undue favours to the petitioner and accordingly, he took up the enquiry upon himself and inspected the records of Sadar Hospital, Chatra. It was found that the petitioner used to remain absent from work in Sadar Hospital, Chatra, and he used to work only for a few days in a month. The Respondent No.3 also found from the record that the petitioner himself was the Drawing and Disbursing Officer from July 2011 to November, 2013, but even in that period, he had not withdrawn his salary. The petitioner had not marked his attendance in the attendance register and he used to remain absent from his work. It was also found that by letter No.183(18) dated 08.08.2012 issued by the State Government, a departmental proceeding was also initiated against the petitioner for his unauthorized absence from Hospital and it is stated in the impugned order that the final decision with regard to the payment of salary to the petitioner, for the period he remained absent, shall depend upon the outcome of the departmental proceeding. On the basis of the records available in the Hospital, Respondent No.3 found that the petitioner had worked only for 8 days in the month of November 2013, for 13 days in the month of December 2013, for 13 days in the month of January 2014, for 12 days in the month of February 2014, for 14 days in the month of March 2014, for 12 days in the month of April 2014, for 12 days in the month of May 2014, for 12 days in the month of June 2014, 05 days in the month of July 2014, 08 days in the month of August 2014 and for 08 days in the month of September

2014, and has accordingly passed the order for payment of salary for those days on which the petitioner was found to have worked.

7. Learned counsel for the petitioner has submitted that the impugned order passed by the Respondent No.3, Civil Surgeon-cum-Chief Medical Officer, Chatra, is absolutely illegal and amounts to punishing the petitioner before the outcome of the departmental proceeding. Learned counsel for the petitioner has submitted that the petitioner has also been subjected to departmental proceeding for the alleged misconduct of absence from service, and accordingly, any further enquiry by the Civil Surgeon-cum-Chief Medical Officer, Chatra, was absolutely uncalled for. Learned counsel also submitted that there is no requirement for a Gazetted Officer to mark his attendance and accordingly, though the petitioner was working in the hospital, he had not only marked his attendance. Learned counsel accordingly, submitted that the petitioner cannot be deprived of his salary for the period already worked by him.

8. Learned counsel for the State on the other hand has opposed the prayer of the petitioner, and has pointed out from the counter affidavit filed on behalf of the respondent State of Jharkhand, that the petitioner is a habitual absentee from work. Previously also, the petitioner used to remain unauthorisedly absent, due to which, his payment had been withheld, for which he had filed WP(S) No.5139 of 2007. The petitioner, however, did not mend his ways, and he had to approach this Court again in WP(S) No.2375 of 2014, due to non payment of his salary. Pursuant to the direction of this Court in WP(S) No.2375 of 2014, the enquiry was conducted by the Civil Surgeon-cum-Chief Medical Officer, Chatra, in which, it was found that he used to work for only a few days in a month and he remained unauthorisedly absent for the remaining days. It has also been pointed out by the learned counsel for the State from the impugned order as contained in Annexure-9 to the writ application, that the petitioner himself was the Drawing and Disbursing Officer for the period for July 2011 to November 2013, but even during the said period, the petitioner had not withdrawn his salary only due to his absence, hoping that he can withdraw his salary when he joins the office. However, the Drawing and Disbursing Officer was changed and the petitioner could not withdraw his salary. Learned counsel has drawn the attention of this Court towards Annexure-11 to the writ application, in which, the petitioner has stated that he was not bound to sign the attendance register. Learned counsel for the State accordingly, submitted that in view of the defiant attitude of the petitioner, the petitioner has rightly been paid salary only for the period, he was found to have worked and for the rest period, he has been denied the salary on the principle of "No Work No Pay". It has been submitted that it has rightly been decided by the Civil Surgeon-cum-Chief Medical Officer, Chatra, that the payment of salary for the period he was found to be unauthorisedly absent, shall depend upon the outcome of the departmental proceeding initiated against the petitioner for the said misconduct.

9. Having heard learned counsels for both the sides and upon going through the

record, I find that the impugned order clearly shows that the petitioner was in habit of remaining unauthorisedly absent from his duty and he was found to be working in the Hospital only for a few days in a month as detailed in the foregoing paragraph, for which period, the salary has been ordered to be paid to the petitioner. So far as the remaining period is concerned, it is stated that the petitioner has already been put under departmental proceeding for his unauthorized absence and the payment of salary for the said period shall depend upon the outcome of the said departmental proceeding. The defiant attitude of the petitioner that he shall not mark the attendance, cannot be appreciated in view of the fact that the other Medical Officers were marking their attendance. I find substance in the submission of the learned counsel for the State that the petitioner himself was a Drawing and Disbursing Officer for certain period and even during those periods also, he had not withdrawn his salary, only due to his unauthorized absence.

10. In view of the aforementioned discussions, I am of the considered view, that the petitioner shall not be entitled to any salary for the period of his unauthorized absence from duty, on the principle of "No Work No Pay". The respondent No.3, Civil Surgeon-cum-Chief Medical Officer, Chatra, has rightly held in the impugned order as contained in Annexure?9 to the writ application, that the payment of salary for the period of absence, as claimed by the petitioner to be working, shall depend upon the outcome of the departmental proceeding. Unauthorized absence of the Medical Officers in the hospitals, has now-a-days taken shape of a menace, jeopardising the essential medical requirements of the public at large, and it must be dealt with all strictness giving a clear message that such things can no more be tolerated. The principle of "No Work No Pay" is the minimum, which must be adhered to in such cases. There is no illegality in the impugned order passed by the Respondent No.3, Civil Surgeon-cum-Chief Medical Officer, Chatra, as contained in Memo No.1539 dated 10.10.2014, brought on record as Annexure?9 to the writ application.

11. I do not find any merit in this writ application and the same is accordingly, dismissed.