
(2022) 02 JH CK 0033

In the Jharkhand High Court

Case No : Writ Petition (S) No. 725 Of 2019

Dr. Shyam Nandan Singh

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 21-02-2022

Acts Referred:

Bihar Board's Miscellaneous Rules, 1958 — Rule 168
Jharkhand Service Code, 2001 — Rule 97, 97(3), 97(5)

Citation : (2022) 02 JH CK 0033

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : R.S.P. Sinha, Rakesh Kumar Sinha, Rahul Saboo

Final Decision : Allowed

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. R.S.P. Sinha, learned senior counsel appearing on behalf of the petitioner along with Mr. Rakesh Kumar Sinha, Advocate.

2. Heard Mr. Rahul Saboo, learned counsel appearing on behalf of the respondents.

3. This writ petition has been filed challenging the notification as contained in memo No. 580 (2) Ranchi dated 29.10.2008 whereby the petitioner was suspended from the post of Medical Officer, Sadar, Hospital Chatra cum District Malaria Officer on alleged carelessness on duty. The petitioner has also challenged the order of punishment dated 25.04.2009 (Annexure-2) whereby the petitioner's suspension order dated 29.10.2008 has been revoked by giving him the punishment of censure. The petitioner has further challenged the letter no. 646 dated 12.10.2018 (Annexure-5 to the writ petition) issued by respondent No. 3, whereby representation of the petitioner regarding payment of his due salary for the period of his suspension has been rejected. The learned counsel has also submitted that there is another letter dated 11.05.2017 issued by the

respondent No. 3 whereby again the claim of the petitioner for salary has been rejected by stating that the petitioner would be entitled to only subsistence allowance and no more for the period of suspension.

4. The learned counsel has submitted that as per the order of suspension, departmental enquiry was contemplated and it was specifically mentioned in the order of suspension itself that separate charge sheet will be issued to the petitioner, but the petitioner was never issued any charge sheet or any show cause and straightway the suspension was revoked vide order dated 25.04.2009 and punishment of censure was passed against the petitioner.

5. The learned counsel has further submitted that a specific statement has been made in paragraph 6 of the present writ petition that the petitioner was waiting for initiation of departmental proceeding and face the charges, but at no point of time he was informed about initiation of any departmental proceeding or to file any show cause or was served with any copy of the charge by the respondents. The learned counsel has further submitted that as per the provisions of Rule 168 of the Bihar Board's Miscellaneous Rules, 1958, for imposing a penalty of censure, an adequate opportunity of making a representation is required to be given which in turn is required to be considered. The learned counsel submits that the order of censure having been passed in gross violation of Rule 168 of Bihar Board's Miscellaneous Rules is itself not sustainable in the eyes of law. However, the learned counsel submits that as the period of censure is over long back, he is not pressing the challenge to the order of punishment dated 25.04.2009 (Annexure-2).

6. The learned counsel further submits that as of now the petitioner is aggrieved by the refusal to grant salary to the petitioner for the period of suspension. The learned counsel submits that the petitioner had made repeated representation for payment of his salary for the period of suspension, but ultimately the same has been rejected by the impugned order dated 12.10.2018 by referring to the earlier order dated 11.05.2017. The learned counsel during the course of argument has submitted that the petitioner would be satisfied, if the petitioner is paid the salary for the period for which the petitioner was suspended. He further submits that as per Rule 97 of the Jharkhand Service Code the order of punishment should itself reflect as to whether the employee would be entitled for payment of differential salary for the period of suspension. He submits that as the order of punishment of censure does not reflect that the petitioner would be entitled only for subsistence allowance and no more, refusal to pay differential salary for the period of suspension cannot be sustained in the eyes of law. Learned counsel has also referred to the judgment passed by this court in the case of Anant Kumar Pandey versus State of Jharkhand [W.P. (S) No. 6660 of 2007 decided on 06.11.2009].

7. The learned counsel appearing on behalf of the respondents on the other hand has submitted that considering the arguments of the petitioner, the case may be remitted back to the respondent No. 3 for fresh consideration of the grievance of

the petitioner. However, a counter affidavit has also been filed in the present case and the perusal of the counter affidavit does not reflect any denial of the aforesaid facts as submitted by the learned counsel for the petitioner based on the averments made in the writ petition.

8. After hearing the learned counsel for the parties and considering the facts and circumstances of this case this court finds that the petitioner was suspended vide order dated 29.10.2008 in contemplation of a departmental enquiry and admittedly no departmental enquiry was held and the suspension of the petitioner was revoked vide order dated 25.04.2009 and a punishment for censure was imposed upon the petitioner.

9. As per the order imposing punishment, nothing has been mentioned as to the payment of salary for the period of suspension. As per the order of punishment, no such direction was issued regarding forfeiture of salary of the petitioner, for the period of suspension. This court also finds that no order in terms of the provisions of Rule 97 of Jharkhand Service Code was passed at the time of revocation of the order of suspension by which punishment of censure was imposed upon him and there is no material on record to suggest as to why the respondents did not pass any order as envisaged under Rule 97 of the Code at the time of passing the order of punishment and as to why the order dated impugned order dated 12.10.2018 as well as order dated 11.05.2017 in terms of Rule 97 have been passed after a gap of 8 years only when the petitioner had filed repeated representations for release of his differential salary for the period of suspension. This court finds that case of the petitioner is squarely covered by the judgment rendered by this court in the case of Anant Kumar Pandey (supra) as would reflect from paragraph 11 to 13 of the said judgment which is quoted as under:-

"11. In the instant case, though the petitioner was put under suspension on 21.11.2001, but his suspension was revoked on 04.10.2002. The departmental enquiry which continued even after revocation of the order of his suspension, was concluded by the Enquiry Officer with a finding that the charge against the petitioner was proved and on the basis of such finding, the competent authority had imposed the punishment of censure against the petitioner on 09.01.2006. No order in terms of the provisions of Rule 97 of the Service Code was passed either at the time of revoking the order of the petitioner's suspension or at the time of inflicting the punishment of censure on him. No reason has been assigned by the Respondents, more so by the competent authority, as to why he did not pass the order as envisaged under Rule 97 of the Code at the time of passing the order of punishment and why such an order under Rule 97 had to be passed after a delay of more than five years from the date of revocation of the order of suspension and more than one year after the date of passing of the order of punishment.

An order passed in terms of Sub Rule 3 of Rule 5 or Rule 97 of the Service Code though not being in the nature of penalty within the meaning of the Service Rule, but none the less its effect is penal in nature, since it adversely affects the

person concerned. In the present case, the adverse effect is the forfeiture of the petitioner's salary for the suspension period.

12. The fact that even the competent authority was conscious of his obligation under the provisions of Rule 97 of the Service Code that an order under the aforesaid Rule has to be passed at the conclusion of the disciplinary proceeding and upon reinstatement of the delinquent employee with minor punishment revoking the order of suspension, is indicated by a deliberate insertion in the impugned order of an observation that the departmental proceeding against the petitioner is closed. Such an insertion appears to have been made only for the purpose of giving an impression that the departmental proceeding had not concluded upon the passing of the order of punishment and upon the reinstatement of the petitioner in service but had continued to stretch, for reasons unknown, till the date when the impugned second order (Annexure-5), was passed.

13. In the light of the above discussions and relying upon the ratio decided in the case of Basishtha Prasad Sinha (Supra) and in the case of Smt. Dipali Kundu (Supra), I hold that the impugned order (Annexure-5) passed in purported exercise of the power under Rule 97 of the Service Code, is illegal and cannot be sustained. Allowing this writ application, I direct the Respondent- competent Authority to pay to the petitioner his full salary for the period of suspension after adjusting the amount of subsistence allowance paid to him, within three months from the date of receipt/production of a copy of this order."

10. Considering the aforesaid judgment passed this court, the order dated 12.10.2018 as contained in Annexure-5 as well as the order dated 11.05.2017 as contained in Annexure-4 are hereby set aside and the writ petition is hereby allowed directing the respondent no. 3 to pay to the petitioner his fully salary, for the period of suspension after adjusting the amount of subsistence allowance, within three months from the date of receipt/production of a copy of this order.

11. Pending I.A., if any, stands closed.