
(2009) 02 JH CK 0080
In the Jharkhand High Court

Dr. Subhash Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 02 JH CK 0080

Hon'ble Judges : Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This appeal is directed against the order dated 27.2.2006 passed in W.P.(S) No. 3115 of 2005 whereby learned Single Judge refused to direct the respondent to pay salary for the period during which he pursued his higher studies in Veterinary Science.

2. The facts which have given rise to this appeal are that while the petitioner was working on the post of Touring Veterinary Officer (T.V.O), he after reorganization of the State was allocated the State of Jharkhand provisionally. In course of his employment, he applied for "no objection certificate" for post graduate study in M.V. Science but when no such certificate was granted, the petitioner preferred a writ application bearing W.P.(S) No. 6505 of 2002. By an interim order passed on 3.12.2002, he was allowed to be admitted provisionally in M.V. Science course subject to grant of no objection certificate. The state of Jharkhand ultimately granted no objection certificate, vide its letter dated 7.12.2002. The said writ application was disposed on 17.2.2003 whereby the competent authority was directed to grant study leave. Thereafter the Government, vide its notification as contained in memo no 3137 dated 20.12.2004 (Annexure 1) granted study leave with full salary for pursuing post graduate studies for the sessions 2004-05 and 2005-06. While the petitioner was pursuing his studies, the petitioner was allocated Bihar Cadre on 20.4.2005 which was objected to by the petitioner, but when nothing was done in this

regard, the petitioner submitted his joining report under protest before the Respondent no. 2 on 6.6.2005 but the said joining report was neither accepted nor the petitioner was allowed to continue his studies at Birsa Agriculture University, Ranchi. Thereupon the petitioner being afraid of having break in service, filed a writ application bearing W.P.(S) No. 3115 of 2005 with a prayer to direct the State of Bihar to allow the petitioner to continue his studies and to pay the salary, but the learned Single Judge, vide its impugned order disallowed the prayer of the petitioner for payment of salary, though directed the State of Bihar to allow the petitioner to continue his studies.

3. Being aggrieved with that order, this appeal has been preferred.

4. Learned Counsel appearing for the appellant submitted that the appellant having been granted study leave with full salary under Annexure 1, took admission in the post graduate course of Birsa Agriculture University and even received his salary from the State of Jharkhand for the period from 20.12.2004 to 7.6.2005. Subsequently, on cadre bifurcation, when the salary was not paid, the petitioner preferred a writ application but the claim for payment of the salary was rejected by this Court by the impugned order without taking into consideration the fact that the petitioner on being granted study leave would always be on duty and as such, the petitioner would be entitled to salary. Learned Single Judge further failed to take notice that under Annexure 1, the appellant had been granted study leave with full salary which the State of Jharkhand and even the State of Bihar would be obliged to keep its promise but the court did not take into consideration all these aspects of the matter and hence, the impugned order is fit to be set aside.

5. It was also pointed out that the petitioner was paid his salary by the State of Jharkhand for the period from 20.12.2004 to 7.6.2005 but the salary for the period from 8.6.2005 to 30.1.2007 during which period petitioner pursued his studies was not paid and that it is only on 31.1.2007 the petitioner's joining was accepted by the State of Bihar.

6. Learned Counsel appearing for the State of Bihar as well as Jharkhand submitted that having granted study leave, the appellant would not be entitled for his salary, rather the appellant would be entitled to admissible allowance as per the provision made in the Bihar Service Code relating to leave salary and under this situation, the prayer made in the writ application has rightly been refused by this Court.

7. Admittedly, the appellant was granted study leave for pursuing higher studies with full salary under Annexure 1 to this memo of appeal. That order seems to have been passed in terms of the Rule 204 of the Bihar Service Code. Even such leave being granted to the appellant, the appellant would not be deemed to be on duty in terms of Rule 14(c)(i) of the Bihar Service Code. Footnote of that rule does stipulate that persons granted leave for the purpose of prosecuting higher studies do not come under the purview of Rule 14(c)(i) of the Bihar Service Code

rather it should be dealt with under the study leave as contained in Sub-section (2) of Section VII of the Bihar Service Code read with supplementary order issued from time to time. On account of this footnote, argument was advanced on behalf of the State that the appellant would not be entitled to full salary, rather he is entitled to admissible allowance in terms of rules relating to leave salary.

8. It be stated that the provision in regard to grant of leave in the Bihar Service Code has been divided into several subchapters of Chapter VI. The provisions regarding grant of study leave has been dealt with in Sub-section (2) of Section VII of Chapter VI of the Bihar Service Code. Sub-section (2) starts with Rule 204 which empowers the Government to grant study leave to the Government servant on the conditions stipulated therein. Further Rule 207 speaks about entitlement of study allowance under Rule 213 but any such stipulation would not be applicable in case of the petitioner under the teeth of the order as contained in Annexure 1 whereby the appellant had been granted study leave with full salary. Argument was advanced on behalf of the State of Bihar as also on behalf of State of Jharkhand that order passed under Annexure 1 being not in accordance with the provision of Service Code would not be binding upon the State of Bihar. But this submission would not hold good for the reason that the order as contained in Annexure 1 may have been passed by the State Government in exercise of power under proviso to Article 309 of the Constitution which empowers the State Government to relax the requirement of a particular rule. The said rule is being quoted in extenso hereunder:

No. III/RI-2010/55A-11505 the 28th November, 1956 - In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of previous order on this subject the Governor of Bihar hereby makes the following Rules.

Where the State Government are satisfied that the operation of any rule regulating the conditions of service of State Government servants, or any class of such Government servants, causes undue hardship in any particular case, they may by order dispense with or relax the requirement of that rule to such extent and subject to such conditions as they may consider necessary for dealing with the case in a just and equitable manner.

9. Under that situation, the stipulation made under Annexure 1 would be binding upon the State of Bihar. Otherwise also the argument advanced on behalf of the State of Bihar as well as Jharkhand is not sustainable as in catena of judgments it has been held by the Supreme Court as well as by the various High Courts that the state is bound by its promises. In *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, it was held as under:

Under our jurisprudence, the Government is not exempted from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the

promise solemnly made by it, nor claim to be the judge of its own appraisal of the circumstances in which the obligation has arisen.

10. In view of the discussion made hereinabove, the order passed by the learned Single Judge rejecting the claim of the petitioner for payment of salary for the period during which he pursued his higher studies is, not tenable. Hence, the order passed by the learned Single Judge to that effect is hereby set aside. Consequently, State of Jharkhand is directed to make payment of salary for the period from 8.6.2005 to 31.1.2007.

In the result, this appeal is allowed.