

(2016) 04 JH CK 0234
In the Jharkhand High Court
Case No : W.P.(S) No. 3630 of 2014

Dr. Umeshwar Sharma

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 AIRJharR 262 : (2016) 151 FLR 382 : (2016) 3 JBCJ 170 :
(2016) 3 JCR 472 : (2016) 3 JLJR 272

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Rajendra Krishna, Advocate, for the Appellant; Mr. Mohan Kumar Dubey, J.C to A.G, for the Respondent

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J.—In the accompanied writ application, the petitioner has inter alia prayed for quashing of memo dated 09.06.2014 issued vide Annexure 2 to the writ application pertaining to recovery of amount of Rs. 44,148/- from the gratuity of the petitioner and for making payment of dues of salary for the period of January, 2013 to May, 2014 and dues of non-practicing allowances (in short "NPA") for the period 26.05.1998 to March 2000 and further prayed for payment of all retrial dues as well as fixation of pay and also revised the payscale after providing 2nd A.C.P as well as M.A.C.P to the petitioner.

2. Sans details, the facts as disclosed in the writ application is that the petitioner while working as District AYUSH Medical Officer, Deoghar was put under suspension vide notification dated 12.01.2013 on the allegation that while he was posted at Dumka in the year 2009 some irregularity was found i.e (i) misuse of administration & financial power and misappropriation of Government money (ii) forgery and (iii) realisation of money in the name of higher officer and other grievous charges. It is further alleged that the petitioner took Non-Practicing allowances by misrepresenting the department. It has further been averred that

for the alleged charges enquiry was conducted by enquiry officer, who submitted its report on 28.10.2013 but the respondents-authorities did not pass any order till his superannuation i.e. 31.05.2014 and just after his retirement impugned order dated 09.06.2014 was passed for recovery of Rs. 44,148/- from the gratuity of the petitioner, which is stated to be withdrawn by the petitioner against non-practicing allowance.

3. Learned counsel for the petitioner submitted that in pursuance to notification dated 26.05.1998 issued by Health, Medical Education, Family Welfare Department, Govt. of Bihar, the Finance Department, Government of Bihar issued memo dated 28.3.2000 and given guidelines for taking non-practicing allowances. It has further been submitted that in compliance to the memo issued by the Finance Department, declaration was given by the petitioner to the authority concerned regarding non-practicing allowances in a private manner vide letter dated 9.05.2000 and that has been duly forwarded to the Secretary, Health, Medical Education, Family Welfare Department, Patna. It has further been submitted a complaint was made vide letter dated 12.02.2005 that the petitioner is violating the declaration of NPA and is doing his private practise, so the amount of NPA is liable to be illegal. Learned counsel for the petitioner submitted that though in the enquiry report dated 21.01.2006, it is clearly stated that the petitioner is not doing private practise and even the Director, AYUSH as well as Under Secretary, Department of Health has given his opinion that the order of recovery of NPA from the gratuity may be cancelled. Learned counsel for the petitioner further submitted that petitioner has filed a representation dated 18.06.2014 before respondent no. 2 for quashing of impugned order of recovery of NPA as well as payment of retrial benefits but till date no action has been taken.

4. Referring to the supplementary affidavit dated 06.01.2016, learned counsel for the petitioner submitted that the Department has taken a decision to initiate a Departmental proceeding against the petitioner under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 and accordingly charge-sheet vide Prapatra "K" was served upon the petitioner, to which, the petitioner replied denying the allegation levelled against him. Thereafter, Presenting Officer was appointed and the enquiry was concluded but when the enquiry report was not served upon the petitioner he obtained the same under RTI Act on 4.12.2013, in which, the petitioner has been exonerated from all the charges but punishment of recovery of the amount of Rs. 44,180/- was imposed upon the petitioner that too after retirement of the petitioner.

5. Per contra, counter affidavit has been filed on behalf of respondent nos. 2 and 3 controverting the averments made in the writ application. It has been submitted that on certain allegations, the petitioner was put under suspension by Deputy Secretary, Health, Medical Education and Family Welfare Department vide order dated 12.01.2013 and departmental enquiry was initiated against the petitioner vide resolution dated 23.07.2013 and on the basis of enquiry report,

impugned order dated 09.06.2014 was passed stating that non-practise allowances drawn by the petitioner, in an irregular and illegal manner, shall be recovered from his gratuity and the period of suspension will be treated as period spent on duty.

6. Learned counsel for the respondents submitted that the District Indigenous Medical Officer, Dumka reported that the petitioner continued to do private practise even after submission of his declaration and as such non-practise allowances drawn by him was not admissible. It has further been submitted that Accountant General (A &E), Ranchi has also sent letter dated 07.06.2006 for recovery of this amount from the petitioner. Learned counsel for the respondent further submitted that according to letter dated 28.01.200 of Finance Department, Government of Bihar NPA is admissible w.e.f 01.04.2000 provided a declaration is submitted by May, 2000 in the prescribed format by every medical officer to the effect that he has stopped private practise. It has been submitted that aforesaid benefit was stopped w.e.f 01.03.2001 vide Finance Department, Govt. of Jharkhand vide letter dated 09.05.2001 as such, NPA was payable only during the period 01.04.2000 to 28.02.2001, hence, the claim of the petitioner for payment of NPA for the period 26.05.1998 to March, 2000 is not tenable.

7. Learned counsel for the respondents further submitted that so far as salary for the period from January, 2013 to May, 2014 is concerned direction has been issued for early payment. The amount of GIS and GPF has already been paid to the petitioner and so far other retrial dues are concerned the same shall be paid shortly.

8. After having heard learned counsel for the respective parties at length and on perusal of the documents available on record, the impugned order of recovery dated 09.06.2014 is liable to be quashed and set aside for the following facts and reasons:

(i). In the enquiry report dated 21.01.2006, the enquiry officer has opined that petitioner was not doing private practise and the allegation of District AYUSH Medical Officer is baseless and further opined that in such view of the matter, NPA for the period 26.05.1998 to March, 2000 can be paid to the petitioner. Basing on this enquiry report, the Director, AYUSH, Department of Health has opined that recovery of non-practicing allowances from the gratuity of the petitioner may be cancelled because the allegation of doing private practise made by the petitioner was not proved. Therefore, impugned order dated 09.06.2014 for recovery of Rs. 44,148/- from the gratuity of the petitioner against NPA is not justified.

(ii). So far as salary for the period January, 2013 to May, 2014 is concerned, a specific statement has been made by the respondents in the counter affidavit that direction has been issued for early payment. It has further been stated in the counter affidavit that amount of GIS and GPF has already been paid to the petitioner and so far other retrial dues are concerned the same shall be paid

shortly.

9. In view of the aforesaid facts and reasons, the impugned order dated 09.06.2014 for recovery of Rs. 44,148/- from the gratuity of the petitioner is hereby quashed. So far as payment of arrears of salary and payment of other retrial benefits are concerned, the respondents are directed to make payment of same as early as possible preferably within a period of six months from today.

10. So far as payment of NPA for the period 26.5.1998 to March, 2000 is concerned, the petitioner is at liberty to file representation before the authority concerned within a period of four weeks from today, who on receipt thereof shall dispose of the representation of the petitioner within a period of eight weeks by passing a reasoned and speaking order communicating the copy of the same to the petitioner.

11. It is needless to mention here that if the petitioner is found legally entitled for admissible dues against payment of NPA for the aforesaid period, the same shall be paid to the petitioner within a period of twelve weeks thereafter.

12. With the aforesaid observations and directions, the writ petitions stand disposed of.