

(2009) 11 JH CK 0114
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5161 of 2007

Jayanti Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Jharkhand Service Code, 2001 — Rule 100, 99
Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2009) 11 JH CK 0114

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; Rajiv Ranjan Mishra, GP-I, for the Respondent

Judgement

D.G.R. Patnaik, J.—Heard learned Counsel for the parties.

2. Petitioner in this writ application, has prayed for a direction upon the respondents to pay him salary with effect from 29.1.2007 onwards, after he gave his joining for duty, after his release from judicial custody. A further prayer has been made for declaring the order of petitioner's suspension dated 22.05.2006 (Annexure-2) passed under Rule 99 of the Jharkhand Service Code, as having exhausted and automatically ceased to have effect from the date of the petitioner's release from custody on 22.01.2007.

3. The main question, as raised by the petitioner, is,

I. Whether in absence of any order passed under Rule 100 of the Jharkhand Service Code, the order passed under Rule 99 of the Code suspending the petitioner from the date of his custody, would stand automatically vacated, on and from the date of his release from custody?

II. Whether, in absence of any specific order passed under Rule 100 of the Code, the "deemed suspension" under Rule 99 of the Code, would continue?

4. Facts of the petitioner's case in brief is as follows:

The petitioner was appointed as a Junior Engineer on 10.2.1979 in the then Irrigation Department (his parent department being the Water Resources Department). Upon allocation of the Jharkhand cadre after bifurcation of the States, the petitioner has been permanently transferred and posted in the State of Jharkhand and his services have been placed in the Rural Development Special Department and he is presently posted in the department at Giridih. A criminal case was instituted by the Vigilance Department against the petitioner and he was remanded to judicial custody on 20.04.2006.

On his remand to judicial custody, an order under Rule 99 of the Jharkhand Service Code was passed whereby under the provisions of "deemed suspension", he was declared to be under suspension. Such order of suspension was passed by the concerned authorities in the Rural Development Department.

5. Upon being granted bail and being released from custody, he submitted his joining at his place of posting on 29.1.2007.

6. His joining was not accepted on the ground that he continues to remain under suspension pursuant to the order (Annexure-2). The petitioner prayed for vacating his suspension and to pay him full salary for the period after suspension, but neither his joining was accepted, nor was his salary released.

7. Being aggrieved, the petitioner has filed the present writ application, praying for the relief as mentioned above.

Shri Rajiv Ranjan, learned Counsel for the petitioner, would submit, by reference to Rule 99 of the Jharkhand Service Code, that Rule envisages "deemed suspension" for the period a Government Servant remains in judicial custody and such deemed suspension would continue only till the date of his remaining in custody and would not operate on and from the date of his release from custody. Learned Counsel adds further that if the disciplinary authority intends the suspension to continue, it could have been made only by way of recording a specific order under the provisions of Rule 100 of the Service Code and in absence of any order passed under Rule 100 of the Code, the deemed suspension cannot continue.

Learned Counsel argues further that even otherwise, the order of deemed suspension, as passed by the concerned authorities under Rule 99 of the Code, is illegal in view of the fact that the petitioner's parent department is the Water Resources Department which alone could have passed such an order. Learned Counsel contends that the respondents were bound therefore to accept the petitioner's joining on and from the date when he had reported for duty after his release from custody and are also bound to pay him the full salary from the period, he was not allowed to join duty.

8 A counter-affidavit has been filed on behalf of the respondents. Shri R.R. Mishra, learned Counsel for the respondents would want to explain that a

criminal proceeding for the offences under Sections 7/13 of the Prevention of Corruption Act, 1988 was instituted against the petitioner in which he was remanded to judicial custody on 20.04.2006 and in contemplation of a departmental proceeding, the petitioner was placed under suspension vide order (Annexure-2). Even though the petitioner's parent department is the Water Resources Department, the petitioner was sent on deputation to the Rural Development Department and in accordance with the notification dated 23.5.1998 issued by the Water Resources Department, Bihar, Patna, the department in which the services of the petitioner was placed on deputation, had the authority to pass the order of suspension of the petitioner.

In response to the specific question as to whether any order in terms of provisions of Rule 100 of the Jharkhand Service Code has been passed, learned Counsel submits by reference to the supplementary counter-affidavit, that no specific order under Rule 100 of the Service Code has been passed against the petitioner.

9. It is informed at the Bar that though a departmental proceeding was contemplated, but the same has not been initiated in as much as, the petitioner has not been served with any charge preceding the contemplated departmental proceeding till date.

10. The controversy as raised apparently relates to the interpretation of the provisions of Rule 99 read with Rule 100 of the Jharkhand Service Code.

11. Rule 99 of the Jharkhand Service Code reads as follows:

A servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is under going imprisonment, and not allowed to draw any pay and allowances (other than any subsistence grant that may be granted in accordance with principles laid down in Rule 96) for such periods, until the termination of the proceedings taken against him or until he is released from detention and allowed to rejoin his duties as the case may be. An adjustment of his allowance for such period (sic) therefore, be made according to the circumstances of the case the full amount being given only in the event of the Government servant being acquitted of crime or (if the proceeding taken against him, were for his (sic) for debt) of its being proved that the Government (sic) liability arose from circumstances beyond his control or detention being held by any competent authority to be unjustified.

12. Rule 100 of the Jharkhand service Code reads as follows:

A Government servant against whom a criminal charge or a proceeding for arrest for debt is pending should also be placed under suspension detained in custody or imprisoned (e.g. while released on bail) if the charge made or proceeding taken against him is connected with his position as a Government servant or is

likely to embarrass him in the discharge of his duties as such or involves moral turpitude. In regard to his pay and allowances the provisions of Rule 99 shall apply.

13. On a plain reading of the provisions of Rule 99 and 100 together, it would be manifest that Rule 99 introduces the concept of "deemed suspension" of the Government servant during the period he is detained in custody. If the competent authority of the Government servant is of the opinion that during the pendency of the proceeding on the basis of the criminal charge, and pending departmental proceeding, the Government servant should be placed under suspension, even after his release from custody on bail, then a specific order of suspension has to be passed by the competent authority as required under Rule 100 of the Service Code.

The period of deemed suspension, as envisaged under Rule 99 of the Service Code, cannot be extended till the proceeding, which has been taken on a criminal charge, is terminated. If the view contrary to the view is taken, then it would render the provisions of Rule 100 of the Code as redundant. There can be no dispute to the proposition that a Government servant against whom a criminal charge is pending, can be put under suspension, although he may not have been taken into custody. There can be no dispute to the proposition that a Government servant can be put under suspension after his release from custody during the pendency of the criminal charge, but the proper interpretation of Rule 99 would not allow the period of deemed suspension to continue beyond the period of custody of the Government servant. If the Government servant is released from custody, the competent authority may proceed to place the Government servant under suspension, but only by passing a specific order separately and made effective from the date of passing of such order.

14. Rule 99 of the Code puts hold upon the grant of pay and other allowances, except the subsistence allowances, to the Government servant during the period of his suspension and the decision to allow him full salary for the suspension period would depend upon the final decision in the departmental proceeding, in the event the Government servant is acquitted of the charge.

15. In the present case, even as admitted, no separate order under Rule 100 of the Service Code has been passed against the petitioner to put him under suspension and neither has any departmental proceeding been initiated against him as yet.

16. Answering the question as raised by the petitioner, I hold that the period of the petitioner's deemed suspension would stand automatically ceased on and from the date of his release from custody. In absence of any separate order of suspension passed under Rule 100 of the Service Code, the respondents have to treat the petitioner as no more under suspension.

Neither Rule 99 nor Rule 100 of the Service Code provides prohibition from allowing the Government servant from joining duty after his release from custody

and neither has the learned Counsel for the respondents produced any such Rule which would offer legal support to the respondents to their act of refusing the petitioner from joining duty on and from the date he had presented himself for joining after his release from custody.

17. In the above facts and circumstances and in absence of any other reasons offered by the respondents, their act of refusing the petitioner to join duty, is illegal. The petitioner would certainly be entitled to demand and receive salary for the period he was not allowed to resume duty in spite of his presenting himself for duty, at his work place.

18. In the light of the above discussions, I find merit in this writ application. The same is accordingly allowed. The respondents are directed to allow the petitioner to resume duty and to treat him in duty on and from the date he has presented himself for joining duty i.e. on 29.1.2007 and to pay him his full salary on and from the aforesaid date. The arrears of salary which accrued till the date of allowing him to join regular duty, shall be computed and paid by the respondents within two months from the date of receipt/production of a copy of this order. The respondents would nevertheless, be at liberty to initiate any action and pass any appropriate order, if they so desire, under the provisions of Rule 100 of the Jharkhand Service Code, in contemplation of any departmental proceeding, to be initiated against the petitioner.

With the above observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent State.