
(2002) 01 JH CK 0063
In the Jharkhand High Court
Case No : CWJC No. 2632 of 2000 (R)

Kamakhya Prasad Singh Choudhary APPELLANT
Vs
Ranchi University and Others RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Citation : (2002) 50 BLJR 644 : (2002) 94 FLR 335

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : S.B. Gododia, B.P. Mishra, R.K. Verma and V.N. Choudhary, for the Appellant; A.K. Mehta and M.S. Anwar, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. Petitioner has prayed for quashing the order dated 10.2.1994 issued by the order of the Vice-Chancellor, whereby the petitioner was reinstated in the service with the condition that he will not be paid arrears of salary during the period of suspension. The order/ notification dated 10.2.1994 read as under:--

"Notification.--After careful consideration of the full facts and the Inquiry Report, the Vice-Chancellor has been pleased to order for reinstatement of Dr. K.P.S. Choudhary with immediate effect on the following conditions:

- (i) that no arrears of salary during the period of suspension shall be paid to him,
- (ii) That the period of suspension shall, however, be counted as service for increment and pension.

Dr. K.P.S. Choudhary is posted to Katras College, Katrasgarh as Principal.

By order of the Vice-Chancellor, S.I/- K.N. Gope. (Registrar).

3. It appears that in 1991 while the petitioner was posted as Principal in the

Katras College, Katrasgarh, he was put under suspension vide order dated 20.7.1991. The said suspension order was followed by issuance of memo of charges dated 25.1.92 which was served on the petitioner alleging certain misconduct. Petitioner submitted his explanation. Petitioner's case is that after long inquiry he was not found guilty of any of the charges and was fully exonerated from all the charges. Consequent thereupon vide notification dated 10.2.1994, petitioner was re-instated in service with the condition of non-payment of arrears of salary referred herein above. Petitioner submitted his joining on 11.2.94 with objection with regard to the condition imposed against him. After few months, petitioner retired on 31.3.1995 after retirement petitioner claimed his retrial dues including arrears of salary for the period during which he was under suspension. In-spite of repeated request, reminders and representations when the petitioner was not paid his retrial dues as also arrears of salary, he filed two writ applications, one being CWJC No. 2630/2000(R) in which he prayed for appropriate direction for payment of retrial dues. In the second writ application which is in hand, petitioner claimed payment of arrears of salary and also for quashing the order of suspension.

4. Mr. S.B. Gadodia, learned senior counsel appearing for the petitioner mainly contended that petitioner was fully exonerated from the charges and was reinstated in service then the respondents could not have imposed condition with-holding payment of arrears of salary for the period of suspension. Learned counsel further submitted that the condition imposed in the order of reinstatement with-holding salary amounts to punishment for which neither any show-cause was given nor copy of the inquiry report was served on the petitioner. Learned counsel also referred relevant provisions of the statute of the University and submitted that in the statute also with-holding of salary by way of punishment is not permissible when the delinquent is exonerated from the charges.

5. On the other hand, learned counsel appearing for the University mainly raised objection on the belated filing of the writ application and submitted that in view of finding recorded by the Inquiry Officer, although petitioner was reinstated in service but rightly without payment of salary.

6. First of all, I will refer Clause 28 of the Statutes, which reads as under:--

"(1) When a University servant who has been dismissed, removed, or suspended is re-instated, the authority competent to order the re-instatement shall consider and make a specific order:

(a) regarding the pay and allowance to be paid to the University servant for the period of his absence from duty; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Where such competent authority holds that the University servant has been fully exonerated, or in the case of suspension that it was wholly unjustified, the

University servant shall be given the full pay to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be, together with any allowance of which he was in receipt prior to his dismissal, removal or suspension.

(3) In other cases, the University servant shall be given such proportion of such pay and allowance as such competent authority may prescribe:

Provided that the payment of allowance under Clause (2) or (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under Clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under Clause (3) the period of absence from duties shall not, be treated as period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose."

Clause 11 of the Statutes also worth to be quoted hereinafter:

"(1) Time passed under suspension pending enquiry into conduct will count as service if the suspension is immediately followed by re-instatement, but time passed under suspension when suspension is adjudged as a specified penalty will not so count.

(2) If a University servant, who has been suspended pending enquiry into his conduct, is re-instated, but with forfeiture of any part of his allowances for the period of suspension, the period will not count as service, unless the authority which re-instates, him expressly declares at the time that it shall so count."

7. From bare reading of the aforesaid two Clauses of the Statutes It is clear that if the employee of the university is fully exonerated from the charges then in absence of any specific finding to the effect that suspension was wholly justified, such employee would be entitled to wages during the period of suspension in the event he is reinstated in service. In the writ petition, the petitioner has very categorically stated that he was fully exonerated from the charges levelled against him in the long run inquiry made by the authority and this fact has not been controverted by the respondents in the counter-affidavit.

8. It has also not been disputed that pursuant to order of reinstatement petitioner joined in service with objection so far as it relates to with-holding of salary. Immediately, thereafter, petitioner superannuated and then continuously made representation not only for payment of salary for the aforesaid period but also for payment of retrial dues and ultimately aforementioned two writ petitions were filed. In that view of the matter, I am of the opinion that merely because the writ petition was filed at a belated stage, the legitimate claim of payment of arrears of salary for the period of suspension cannot be refused.

9. For the aforesaid reasons, this writ application is allowed and the impugned order so far as it relates to with-holding of salary for the period of suspension is

quashed. Respondent University is directed to release the arrears of salary for the period in question within a period of two months from the date of receipt of copy of this order.