
(2012) 08 JH CK 0162
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5181 of 2006

Kiran Agarawal

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Citation : (2012) 08 JH CK 0162

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Pankaj Kumar, for the Appellant; Rakhi Rani, J.C. to Sr. S.C. II, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh

1. Petitioner, who was working as Assistant Teacher, has claimed salary for the period w.e.f. 01.01.1996 to 08.01.1999. Petitioner had earlier filed W.P. (S) No. 3196 of 2003, which was disposed of by this Court vide order dated 09.07.2003.

2. Order dated 09.07.2003 reads as under:

This case relates to payment of arrears of salary. According to petitioner, he has not been paid the arrears of salary for the period from 01.01.1996 to 08.01.1999.

Counsel for the respondents referred to an order dated 23rd March, 1998 and submitted that the petitioner has not joined the transferred post. However, this averment is disputed by the petitioner stating that the order of transfer was never served on the petitioner.

In the facts and circumstances, the case is remitted to the Regional Director (Education), Palamau at Daltonganj to determine whether the order of transfer was served on the petitioner or not. If it was served, but petitioner failed to join the transferred post, then he will determine as to how period, in question, shall be counted and what salary to which the petitioner shall be entitled.

Aforesaid decision is to be taken after taking into consideration the leave account of the petitioner and the relevant provisions of the Bihar Service Code (now Jharkhand), 1952 and if any amount is found payable to be paid within a period of three months from the date of receipt of the representation along with copy of this order.

The writ petition stands disposed of with aforesaid observations and directions.

3. In compliance of the order passed by this Court dated 09.07.2003, Regional Deputy Director of Education, Palamau has considered the matter and was pleased to reject the claim of the petitioner, vide order dated 08.12.2003. Regional Deputy Director of Education, Palamau, in the impugned order, has observed that District Superintendent of Education, Palamau has not placed on record any document, to prove that transfer order was ever served on the petitioner, nor any postal receipt was placed before him to prove that transfer order was sent by registered post. However, he observed that there is no proof that petitioner remained attached in the office of District Superintendent of Education, Palamau.

4. Petitioner has filed Attendance Register as Annexure 1 to the writ petition to show that petitioner remained present in the office of District Superintendent of Education, Palamau and has signed the attendance register. In the counter affidavit, stand taken by Respondent No. 4 is that petitioner has managed to prepare the fact, on record, to prove the period of absence, i.e. 01.01.1996 to 08.01.1999, as on duty. Perusal of the counter affidavit, suggests that there is no specific denial or challenge to Annexure 1. Respondents are not contending that Attendance Register (Annexure 1) is manufactured, fabricated and bogus document. From the perusal of Annexure 1, it is clear that petitioner remained present in the office of District Superintendent of Education, Palamau w.e.f. 01.01.1996 to 08.01.1999.

5. Ms. Rakhi Rani, learned counsel appearing for the Respondents, has submitted that Attendance Register (Annexure 1) was never produced before the Regional Deputy Director of Education and it contains the signature of District Superintendent of Education, on the last page only, therefore, no reliance should be placed on it.

6. I am not inclined to accept the submission of Ms. Rakhi Rani, for the simple reason that signature of District Superintendent of Education on the last page, is not under challenge.

7. Moreover, if petitioner was not reporting on duty w.e.f. 01.01.1996, in the normal course, Department would have issued a show cause notice to the petitioner, for remaining absent unauthorizedly and would have proceeded against the petitioner, in accordance with law. Since, no notice was ever been issued to the petitioner, in between 01.01.1996 to 08.01.1999, it goes to prove that petitioner remained present on duty. Since, petitioner is still working and has joined the duties after receiving the orders, therefore, denial of the wages

for the period w.e.f. 01.01.1996 to 08.01.1999, seems to be totally unjustified and arbitrary. Therefore, present writ petition is allowed. Impugned order, issued by Respondent No. 2, is hereby quashed. Respondents are directed to release the payment of salary w.e.f. 01.01.1996 to 08.01.1999 within sixty days from the date of receipt of this order.