

**(2008) 12 JH CK 0101**  
**In the Jharkhand High Court**

Phillip Tirkey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 12-12-2008

**Acts Referred:**

**Citation :** (2008) 12 JH CK 0101

**Hon'ble Judges :** Ajit Kumar Sinha, J

**Bench :** Single Bench

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**Judgement**

Ajit Kumar Sinha, J.—The present writ petition has been filed seeking a direction against the respondents to quash the order dated 20.8.2005, passed by the District Superintendent of Education, Latehar (respondent No. 3), whereby and whereunder, the petitioner's claim for payment of retiral benefits has been rejected, based on Rule 76 of the Bihar (Now Jharkhand) Service Code, on the ground that the petitioner was absent from 1.3.1988 to 31.5.2005;

2. Earlier the petitioner had filed WP (S) No. 2892 of 2004. seeking a direction to accept his joining, which he had submitted on 12.2.2004. This Court vide its order dated 21.6.2004 observed that there was nothing on record to show that the petitioner remained in the Mental Hospital from 1988 to 2005.

3. However, this Court finally directed respondent No. 3 to consider the representation of the petitioner and take a decision in accordance with law pursuant to which a decision was taken by respondent No. 3 and vide order dated 20.8.2005, which is under challenge herein. It was directed that the District Education Establishment Committee in its meeting dated 20.8.2005 took a decision that the petitioner, who was absent from 1.3.1988 to 31.5.2005 (the date of retirement), which is 17 years and three months without any notice, was not entitled to any pensionary benefit in view of Rule 76 of the Bihar (now Jharkhand) Service Code.

4. The main contention raised by the learned Counsel for the petitioner is that till date no order of removal has been communicated and, thus, he cannot be

denied the benefit of pensionary rights at least for the period, the petitioner has worked, which has also been admitted by the respondents. According to the petitioner, he has joined the services on 14.10.1968 and worked till 13.7.1988.

5. Learned counsel for the petitioner further submits that Rule 76 of the Bihar Service Code has already been quashed by the Hon"ble Supreme Court, as reported in Deokinandan Prasad Vs. The State of Bihar and Others, and subsequently, I am informed that it was amended and a prior notice was made mandatory. A Division Bench of Patna High Court has also decided the said issue in the case of Smt. Pravabati Sengupta v. State of Bihar and Ors. as reported in 1989 BLJ 487. A learned single Judge Bench has also decided the said issue in the case of Kameihwar Jha v. The State of Bihar and Ors. as reported in 2000(1) PLJR 201.

6. In view of the aforesaid judgments, learned Counsel for the petitioner submits that neither any notice was given nor any reason was assigned and, thus, the order is violative of the cardinal principle of natural justice.

7. In view of the aforesaid admitted fact that the petitioner actually worked from 14.10.1968 till 13.7.1988 and no order of removal has been passed, thus, the respondents are bound to pay the retiral dues at least for the period he has worked i.e., 14.10.1968 to 1988 as per settled law. However, he is not entitled to any pensionary benefit for the period 1.3.1988 to 31.5.2005 when he was unauthorizedly absent.

8. This writ petition is, thus, partly allowed to the extent, as aforesaid, but without any order as to cost.