
(2004) 02 JH CK 0014
In the Jharkhand High Court
Case No : W.P.S. No. 3454 of 2003

Prasenjit Ghosh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Bihar Service Code, 1952 — Rule 97

Citation : (2004) 2 JCR 201

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

Bench : Single Bench

Advocate : Jaya Roy, for the Appellant; Ravindra Prasad, J.C. to S.C. II, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner seeks a direction upon the respondents to revoke the order of suspension with effect from 16.7.1996 and to pay him full salary for the said period.

2. The petitioner was working on the post of typist in the office of the Administrator, Research Cell, Adityapur, Jamshedpur. In 1996 a criminal case was instituted against him under Sections 498A and 306, IPC and petitioner was arrested in this case on 16.7.1996. Pursuant to that arrest he was under suspension vide order dated 23.11.1996. However, the petitioner was released on bail, by this Court by order dated 8.7.1997 in Criminal Misc. No. 2514 of 1997. The petitioner then joined his service on 14.5.1997. It is contended by the petitioner that he has been acquitted in the aforesaid criminal case by judgment dated 25.8.1999 by the Court of Additional Sessions Judge, Saraikella. After acquittal his suspension order was revoked by the Administrator, Subarnarekha Project w.e.f. 25.8.1999 by office order dated 13.5.2000. The petitioner thereafter filed an application before the Administration requesting him to revoke the suspension order w.e.f. 16.7.1996, the date when he was arrested in the Criminal case instead of 25.8.1999 and grant him full salary for the said period.

The petitioner also claimed full salary for the period from 15.7.1996 to 24.8.1999 as he received only subsistence allowances for the said period.

3. Respondents' case, on the other hand, is that the petitioner proceeded on earned leave from 16.6.1996 to 27.7.1996 during which period he was arrested on the charge of burning his wife. After completing earned leave, the petitioner could not submit his joining report in the office. It is contended by the respondents that the petitioner did not inform them about his arrest and moving the Court for grant of bail. So far payment of salary is concerned, the respondents' case is that the petitioner did not work during the period of suspension and so he is not entitled to get salary for the said period.

4. Mrs. Jaya Roy, learned counsel appearing on behalf of the petitioner submitted that in case of acquittal of an employee in the criminal case, he is entitled to full salary for the entire period during which he remained under suspension because of the criminal case. Learned counsel relied upon the decisions reported in *Brahma Chandra Gupta Vs. Union of India (UOI)*,

5. Rule 97 of the Bihar Service Code lays down the provisions with regard to such a situation. Rule 97 reads as under :

"97. (1) When a Government servant who has been dismissed, removed or suspended, reinstated, the authority competent to order the reinstatement shall consider and make specific order.--

(a) regarding the pay and allowances to be paid to the Government 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 the authority mentioned in Sub-rule (1), is of opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be.]

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe.

Provided that the payment of allowances under Clause (2) or Clause (3) shall be subject to all other conditions under which such allowance 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 the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that if the Government servant so desires such authority may direct that the period of absence from duty shall be converted into leave of any kind

due and admissible to the Government servant."

6. From the aforesaid provision it is clear that if the employee is fully exonerated from the charges, he shall be entitled to full pay and allowances which he would have been entitled had he not been dismissed, removed or suspended. From perusal of the judgment of acquittal passed by the Sessions Court it appears that the petitioner was not found guilty of the charges levelled against him and the prosecution failed to prove the case against the petitioner. In my considered opinion, therefore, the impugned order revoking the suspension of the petitioner only w.e.f. 25.8.1999 when the judgment in the criminal case was delivered, is wholly illegal and against law, further, in my considered view, the principle of "no work no pay" will also not apply in the facts and circumstances of the present case. Admittedly, because of the order of suspension, the petitioner was not allowed to discharge his duty. It is, therefore, held that the petitioner would be entitled to full salary and allowances for the entire period of suspension.

9. This writ application is, therefore, allowed and the respondents are directed to release full salary and allowances to the petitioner for the entire period of his suspension.