
(2002) 09 JH CK 0023
In the Jharkhand High Court
Case No : L.P.A. No. 135 of 2002

Shatrughan Keshari

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-09-2002

Acts Referred:

Bihar Service Code, 1952 — Rule 103

Citation : (2002) 50 BLJR 2029

Hon'ble Judges : Vinod Kumar Gupta, C.J.; Tapen Sen, J

Bench : Division Bench

Advocate : Prakash Chandra, for the Appellant; Indrani Sen Choudhary, S.C. III, for the Respondent

Judgement

Tapen Sen, J.—The order dated 16.1.2002 passed by a learned Single Judge of this Court in W.P.(S) No. 405 of 2002(R) dismissing the Writ Application on the ground that the appellant had challenged the impugned order after about seven years, is under challenge before us in this Letters Patent Appeal.

2. The case of the appellant is that in the year 1973 he was appointed as Family Welfare Health Assistant, whereafter having worked at various places, he was presently working at the Primary Health Centre, Rania, Ranchi. By order/memo dated 30.1.1995, the respondent No. 2 directed the appellant to work on an additional post, i.e., the post of Block Extension Educator in addition to his duty of the Family Welfare Health Assistant. According to the appellant the post of Block Extension Educator was the next promotional post and although the appellant had been asked to discharge his duties on the aforementioned additional post of Block Extension Educator, yet he was not given any additional or officiating pay. The appellant has stated and has made a grievance that even 20% officiating allowance was denied to the appellant and such denial was contrary to the provisions of Rule 103 of the Bihar Service Code. The appellant placed reliance on the case of Raghunath Ram v. State of Bihar and others, by which a learned Single Judge by order dated 16.8.1999 directed the Respondents

to pay allowances in terms of Rule 103 of the Bihar Service Code.

3. The appellant has stated that on the basis aforementioned direction, he also approached the Controlling Officer and by a letter dated 1.10.1999 the respondent No. 3 (Additional Chief Medical Officer, Ranchi) directed the respondent No. 4 (In-charge Medical Officer, Primary Health Centre, Rania, Ranchi) to make payment of additional pay in accordance with Rule 103 of the Bihar Service Code. The aforementioned order dated 1.10.1999 is Annexure-4 to the Memorandum of appeal.

4. Pursuant to the aforementioned direction dated 1.10.1999, the appellant filed a representation before the respondent No. 4 but he did not do anything in the matter as a result whereof the appellant was compelled to move W.P.(3) No. 405 of 2002(R).

5. The appellant has stated that the order of the learned Single Judge is neither fair nor proper inasmuch as the grievance of the writ petitioner before the writ court was that although he had been directed to work on the post of Block Extension Educator, yet he had not been paid any additional/officiating pay of 20% contrary to the Rule 103 of the Bihar Service Code. The appellant has further stated that he is continuing to work and discharge his duties on the aforementioned additional post right from March, 1995 till today. The appellant has further stated that in fact there has been no delay on his part inasmuch as immediately after an order was passed in similar case, i.e., C.W.J.C. No. 1292 of 1998(R) (Annexure-3), the appellant filed various representations, whereafter the Additional Chief Medical Officer, Ranchi (respondent No. 3) directed the respondent No. 4 to act in terms of Rule 103 of the aforementioned Bihar Service Code. In fact what the appellant has submitted is that by Annexure-4, the respondent No. 3 in fact had granted approval of payment of 20% allowance etc. and since that was not being complied with, the appellant had filed a representation on 6.7.2000 and therefore, there was no delay on his part.

6. In the counter affidavit filed by the respondent No. 2 (Civil Surgeon-cum-Chief Medical Officer, Ranchi) it has inter alia been stated that the post of Block Extension Officer is a State Cadre Post and it is only the Director-in- Charge, Health Services who is competent to transfer, post, appoint or promote a person on the said post and under no circumstances a Civil Surgeon-cum-Chief Medical Officer can pass orders in relation to the aforesaid acts.

7. He has further stated that the post of Block Extension Educator is a promotional post and of which, the Family Welfare Health Assistant is the lowest rung in the Media and Extension Scheme of the Health Department. He has further stated that the letter dated 30.1.1995 which is the sheet anchor of the case of the appellant could not have been issued by the Civil Surgeon-cum-Chief Medical Officer as he did not have the competence to do so. He has further stated that the appellant willfully accepted the assignment and did not raise any objection and only after a belated period of seven years, filed the writ petition.

8. There is no explanation as to why the writ petitioner did not make a prayer in relation to his grievances earlier. Merely, because the writ petition was allowed in the case of Raghunath Ram on 16.8.1999, that by itself cannot be said to be a ground to explain the delay for his having moved the Writ Court in the year 2002.

9. However, what cannot be lost sight of is that from the pleadings made and especially paragraph 12 of Memo of Appeal, it is apparent that the appellant is still continuing to officiate on a higher post.

10. Without, therefore, interfering in any manner with the Order of the learned Single Judge, this Court considers it expedient in the interest of justice to modify the Order dated 16.1.2002 by giving liberty to the appellant to file a fresh representation before the concerned authority. If such a representation is filed within a period of two weeks from today, then the authority concerned shall look into the grievances and pass a reasoned order in accordance with law within a period of four months from the date of receipt of such representation without being influenced in any manner with the observations made by the learned Single Judge as also by us to the effect that there is no explanation in relation to the delay referred to above. The Order of the learned Single Judge shall stand modified to that extent.

11. With the aforementioned modification, observations and direction this Letters Patent Appeal is disposed off. However there shall be no order as to costs.