
(2019) 06 JH CK 0034

In the Jharkhand High Court

Case No : Letter patent Appeal No. 550 Of 2017

Shyam Deo Prasad Singh

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 12-06-2019

Acts Referred:

Jharkhand Service Code, 2001 — Rule 97

Citation : (2019) 06 JH CK 0034

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : M.M. Pal, B.K. Jha, S.C. Roy, Raunak Sahay

Final Decision : Allowed

Judgement

Heard learned senior counsel for the appellant and learned counsel for the Respondent State.

2. The appellant is aggrieved by the impugned order dated 18.07.2017, passed by the Honâ??ble Single Judge in W.P.(S) No.7161 of 2016, whereby,

though, the writ application was allowed by the Honâ??ble Single Judge, but the appellant was denied the relief of payment of salary for the period,

he was under suspension.

3. The appellant, who was working as In-charge Headmaster of a school, was put under suspension w.e.f. 24.6.2010, and ultimately, the punishment

order was passed on 31.10.2013, in which the following punishments were imposed upon the appellant:-

(i) Compulsory Retirement

(ii) Reduction of 10% pension; and

(iii) No salary for suspension period except the subsistence allowance.

4. The appellant challenged the said order in this Court in W.P.(S) No.6060 of 2012, which was allowed by the order dated 6.11.2015, as contained in

Annexure-3 to this memo of appeal. The order shows that the punishment was imposed upon the appellant for such misconducts, for which certain

criminal cases were also filed against the appellant, and the punishment was imposed on the ground that he was implicated in those criminal cases. As

the appellant was ultimately acquitted by the competent Court in the criminal cases, the impugned order of punishment was also quashed by this Court

and the matter was remanded to the disciplinary authority to consider the case of the appellant afresh, in view of the acquittal of the appellant in

criminal cases, and to pass appropriate order in accordance with law, preferably within a period of four months from the date of receipt / production of

the order. Admittedly thereafter, nothing was done by the respondents and the order of this Court quashing the punishment order of the appellant

attained finality. It is also not in dispute that thereafter the petitioner was reinstated on his post vide order dated 29.3.2016, passed by the competent

authority, as contained in Annexure-5 to this memo of appeal.

5. The appellant however, was denied the salary for the period from 24.06.2010 to 31.3.2016 (minus subsistence allowance already paid during

suspension period), which included the denial of his salary for the period from the date of punishment order, i.e. 31.10.2013, till he was reinstated in

service vide annexure-5 to this memo of appeal, on the ground of 'no work no pay'. The appellant approached this Court again in W.P.(S) No.7161 of

2016, which was allowed by the Honâ??ble Single Judge by order dated 18.07.2017, directing the payment of the salary to the appellant from the date of

punishment till the date of his reinstatement. So far so good. The appellant was however, denied the salary of the period of suspension by the

Honâ??ble Single Judge, stating that the appellant had already received the subsistence allowance and no order had been brought on record as to

from which date suspension was revoked, and as such, the Honâ??ble Single Judge was not inclined for the payment of salary for the period of

suspension.

6. Learned senior counsel for the appellant has challenged this part of the impugned order in this present Latters Patent Appeal, submitting that the

punishment, that was imposed upon the appellant was quashed by this Court in

W.P.(S) No.6060 of 2012, and thereafter nothing remained against the appellant. No further order was passed by the respondent authorities against the appellant, in spite of that opportunity given by this Court, and in that view of the matter the salary for the period of suspension could not be denied to the appellant. Learned senior counsel accordingly, submitted that it is a fit case, in which, the appellant ought to have been allowed the salary for the suspension period also.

7. Learned counsel for the State on the other hand has opposed the prayer and has drawn our attention towards Rule 97 of the Jharkhand Service

Code, submitting that he is not against the payment of salary to the appellant for the period of suspension, but under Rule 97 of the Jharkhand Service

Code, it is for the competent authority to decide as to what payment shall be made to the appellant for the suspension period. Learned counsel for the

State accordingly, submitted that the matter be remanded to the competent authority to take a decision regarding the payment of salary of the

appellant for the suspension period, in accordance with law.

8. Having heard learned counsels for both the sides and upon going through the record, we find that by order dated 6.11.2015 passed in W.P.(S) No.

6060 of 2012, whereby the punishment order of the appellant was quashed, the liberty was given to the disciplinary authority to pass the order afresh,

but no such order was passed by the disciplinary authority, rather the appellant was reinstated in service. The fact remains that upon the order of

punishment having been quashed, no fresh order having been passed by the disciplinary authority, and allowing the appellant to be reinstated in service,

nothing remains against the appellant so as to deprive the appellant from the salary of the period of his suspension. Though the Hon'ble Single Judge

has denied the salary for the period of suspension holding that there is nothing on the record to show as to when the suspension was revoked, but the

fact remains that there was no question of revocation of suspension order, as the suspension of the appellant had culminated in his compulsory

retirement, and other punishments, which have been quashed by this Court. It is not in dispute that the appellant was not under suspension prior to the

punishment order. We also find from the record that withholding the salary for the period of suspension was one of three punishments imposed upon

the appellant in the punishment order dated 31.10.2013. That order having been

quashed, there is no occasion for withholding the salary of the period of suspension of the appellant.

9. We are of the considered view that the Honâ??ble Single Judge has missed this aspect of the matter while passing the impugned order dated 18.7.2017, in W.P.(S) 7161 of 2016, and accordingly, only that part of the order, by which the salary for the suspension period, i.e., from 24.6.2010 till the date of the punishment order, i.e., 31.10.2013, has been denied to the appellant, cannot be sustained in the eyes of law, and is accordingly, set aside.

10. We are informed that the appellant has superannuated from service. We accordingly, direct the respondent authorities to make the payment of admissible salary and allowance of the appellant for the aforesaid period, minus the amount already paid as subsistence allowance, within a period of three months from the date of the communication of this order.

11. This Letters Patent Appeal is accordingly, allowed.