

**(2011) 08 JH CK 0020**

**Jharkhand High Court**

**Case No:** Writ Petition (S) No. 899 of 2011

Dr. Shiv Narayan Mandal

APPELLANT

Vs

The State of Jharkhand and  
Others

RESPONDENT

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**Date of Decision:** Aug. 8, 2011

**Acts Referred:**

- Jharkhand Pension Rules, 2000 - Rule 43

**Hon'ble Judges:** Dhirubhai Naranbhai Patel, J

**Bench:** Single Bench

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### **Judgement**

D.N. Patel, J.

The present writ petition has been preferred mainly for the reason that the Petitioner has not been paid subsistence

allowances for the period of suspension. The Petitioner was suspended on 11th July, 1996. The Petitioner was convicted vide order dated 12th

June, 2008 in the criminal matter. The Petitioner was paid subsistence allowance till October, 2008 and thereafter, neither any inquiry was

conducted by the Respondents nor any order of dismissal was passed by the Respondents and the suspension was continued till the

superannuation of the Petitioner i.e. on 31st March, 2011. Neither the departmental inquiry was conducted nor the Petitioner was dismissed from

the services. No. specific order has been passed for the Petitioner and therefore, the Petitioner is entitled for subsistence allowances during the

period of suspension. The Petitioner has already retired by reaching the age of superannuation on 31st March, 2011 and therefore, the present

petition has been preferred for getting subsistence allowance from November, 2008 till 31st March, 2011.

2. Counsel for the Respondent State submitted that since there is a conviction, the Petitioner has been dismissed from the services. Similar order

has been passed for other candidates also. Counsel for the Respondent State is also relying upon Annexure A to the counter affidavit, filed by the

Respondents and has also placed reliance upon Rule 43(a) of Jharkhand Pension Rules, 2000 and has submitted that once there is a conviction in

the criminal case, the Petitioner is not entitled for subsistence allowances and therefore, the present writ petition deserves to be dismissed.

3. Having heard counsel for both the sides and looking to the facts and circumstances of the case, it appears that:

(i) the Petitioner was put under suspension vide order dated 11th July, 1996 during pendency of the departmental inquiry, but, the fact remains that

there was No. such departmental inquiry ever conducted by the Respondents.

(ii) the Petitioner was convicted in criminal case vide order dated 12th June, 2008.

(iii) the Petitioner was paid subsistence allowance during the period of suspension upto October, 2008.

(iv) from Annexure A to the counter affidavit, filed by the Respondents that some other candidates, similarly situated like Petitioner, are not paid

subsistence allowances. There is No. specific order, passed for this Petitioner. Other candidates might have been dismissed by the State, but, there

is No. specific order even of dismissal of the Petitioner from services. There is No. such counter affidavit stating that the Petitioner's services have

been brought to an end by dismissal order.

(v) Rule 43(a) of the Jharkhand Pension Rules, 2000, which is relied upon by the counsel for the State for nonpayment of subsistence allowance is

not applicable to the facts of the present case. Rule 43(a) of the aforesaid Rules reads as under:

43(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of

withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision

of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

The aforesaid Rule never permits the RespondentState not to make the payment of subsistence allowance. The Petitioner is under suspension from

11th July, 1996 and has already been paid subsistence allowance till October, 2008 and for No. justifiable reason, the same have been stopped.

The Petitioner has now retired on 31st March, 2011.

(vi) thus, neither the departmental inquiry has been concluded nor the suspension has been brought to an end by dismissal order of the Petitioner.

Suspension continued till the Petitioner reached at the age of superannuation. Nothing has been stated in the counter affidavit that the Petitioner's

services have been brought to an end upon his conviction.

4. In view of these facts and reasons, the Petitioner is entitled to the subsistence allowances and therefore, I hereby, direct the RespondentState to

pay the Petitioner the subsistence allowances for the period running from November, 2008 till 31st March, 2011 within a period of four weeks

from the date of receipt of a copy of an order of this Court.

5. This writ petition is disposed of, in view of the aforesaid directions.