

**(2001) 03 JH CK 0009**

**Jharkhand High Court**

**Case No:** CWJC No. 1866 of 1999 (R)

Ranjeet Kumar Bose

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision:** March 19, 2001

**Acts Referred:**

- Constitution of India, 1950 - Article 41, 43

**Citation:** (2001) 90 FLR 645

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

**Bench:** Single Bench

**Advocate:** T. Sen and T. Kabiraj, for the Appellant; R.K. Merathia, GP 2 and A.B. Mahata, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

In this writ application, the petitioner has challenged the decision of the respondent which was communicated to the petitioner vide letter No. 853, dated 11.9.1997 whereby petitioner was refused to pay salary for the period 30.9.1993 to 2.9.1996 and further for a direction to the respondents to release the salary for the aforesaid period.

2. Petitioner while working as Karmchari in the Ramgarh Anchal in the year 1992, a departmental proceeding was initiated against him in respect of certain charges, as a result whereof he was dismissed from service in October 1993. Aggrieved by the order of dismissal passed by the Deputy Commissioner. Hazaribagh petitioner filed Service Appeal before respondent No. 2. Commissioner. North Chotanagpur Division, Hazari-bagh, which was registered as Service Appeal No. 87/93. The Appellate Authority eventually set aside the order of dismissal after coming to the conclusion that penalty of dismissal was extremely severe. The Appellate Authority,

therefore, directed that for the negligence and/or lapse on the part of the petitioner, he should be censured and two increments should be stopped with cumulative effect. After the aforesaid order was passed on 29.8.1996 petitioner submitted his joining on 3.9.1996 and on 29.10.1996 he was posted at the Keredari Anchal where he has been working as Karamchari. Petitioner, therefore, filed application for payment of salary which was stopped with effect from the date of dismissal, i.e., 30.9.1993 till the date of his joining. Respondent No. 3, Deputy Commissioner Hazaribagh after considering his application issued the Impugned letter, dated 5.2.1997 instructing the Circle Officer, Keredari not to make any payment of salary for the aforesaid period on the basis of no work no pay. Petitioner then again filed the appeal before the respondent No. 2. Commissioner, North Chotanagpur Division, Hazari- bagh against the order dated 5.2.1997 and the Commissioner passed order on 17.5.1999 and upheld the order of the Deputy Commissioner.

3. Mr. Tapan Sen, learned counsel for the petitioner assailed the impugned order as being illegal, arbitrary and wholly without jurisdiction. Learned counsel firstly, submitted that while passing the impugned order for non-payment of salary on the principle of no work no pay, the respondents have not taken into consideration that the act of the petitioner in not working during the aforesaid period was not an act resorted to out of his volition but was an act enforced upon him by the respondents. Learned counsel further submitted that by applying the principle of no work no pay, respondents have inflicted third punishment upon the petitioner which will amount to double jeopardy. Learned counsel then submitted that respondents have no authority or jurisdiction to withhold the salary of the petitioner without any rhyme or reason. Learned counsel relied upon the decision of the Supreme Court in the case of [Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others](#).

4. On the other hand. Mr. R.K. Merathia. GP 2 submitted that the impugned order passed by the respondents will not amount to inflicting third punishment as admittedly, petitioner did not work during the aforesaid period. Learned G.P. 2 further submitted that although charges levelled against the petitioner was proved in the departmental proceeding but the Appellate Authority considered the claim of the petitioner sympathically and reduced the punishment. In that view of the matter, the petitioner cannot claim salary for the aforesaid period.

5. Before appreciating the rival contention made by the learned counsel. I would first discuss the law laid down by the Supreme Court in this regard. In the case of [Union of India Vs. K.V. Jankiraman, etc. etc.](#), a question arose as to whether an employee would be entitled to the benefits of promotional post after the exoneration of the employee in criminal charges or disciplinary proceeding. Their Lordships observed :

"We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found

blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of nonavailability of evidence due to the acts attributable to the employee, etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interest. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal."

6. In the case of *Hindustan Tin Works v. Its Employees* 1979 SC 75, a question arose for consideration was whether a workman whose service has been illegally terminated either by dismissal, discharge or retrenchment will be entitled to full back-wages. Considering that question their Lordships held :

"Ordinarily, therefore, a workman whose service has been Illegally terminated would be entitled to full back-wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If, the employer terminates, the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, It should be followed with full back-wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the UP Industrial Disputes Act. 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the service were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the apex Court and now they are being told that something less than full back-wages should be awarded to them. If, the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If, the workmen were always

ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back-wages which were very legitimately due to them."

7. As noticed above, petitioner was dismissed from the service after a departmental proceeding was concluded against him. The petitioner preferred service appeal No. 87/93 against the dismissal order passed by the Disciplinary Authority. The Appellate Authority, namely, Commissioner, North Chhotanagpur Division disposed of the appeal has passed a very elaborate reasoned order. The charges against the petitioner are: (1) Without any order of competent authority he has issued rent receipts in respect of gair-mazarua land after receiving illegal gratification Rs. 4,000/- (2) furnished incorrect information to the LRDC to the effect that in compliance with the correction slip relating to mutation case petitioner Issued rent receipts in the name of different persons, (3) entering the name of one Katri Devi in the tenants" ledger, Register-II without any authority of law and for personal gain. The Appellate Authority although found that some of the charges levelled against the petitioner has not been sufficiently proved, came to the conclusion that because of his illegal action and gross negligence, rent receipts have been issued. The relevant portion of the order of the Appellate Authority reads as under :

"Regarding the second case of wrong issue of rent receipt in respect of land in village Kundrukala the lapse has been admitted by the Karamchari and attributed to pressure of work. He had also cancelled the rent receipts later on realising the mistake. Thus, while the first set of charges is not proved, the second set of charges is proved but mala fide intention has not been proved.

In view of the above conclusion, the penalty of dismissal is found to be too severe to sustain. The lower Court order is set aside. It is also ordered that for the lapse which has been admitted he should be censured and two increments should be stopped with cumulative effect."

8. From the order aforesaid passed by the Appellate Authority, It is clear that the Commissioner found some charges proved against the petitioner, up to some extent and on that basis of the order of dismissal was modified to two minor punishments, i.e., censur and withholding of two increments with cumulative effect. In my opinion, this was the reason why the Appellate Authority did not pass any order for payment of back- wages.

9. The ratio decided by the Supreme Court in the case of Hindustan Tin Works, (supra) as relied upon by Mr. T. Sen does not apply in the facts of the present case. On the contrary the radio decided by the Supreme Court in the case of K.V. Jankiraman, (supra) is applicable in the present case. It is not a case where petitioner was completely exonerated from the charges levelled against him, rather one of the charges was proved against him and he was found guilty of serious lapse and negligent. Petitioner was finally visited with the penalty of censur and stoppage of

two increments. This was the reason; the Appellate Authority did not pass any order for payment of monetary benefits during the period when he remained out of service.

10. Admittedly, after the order of dismissal was set aside the petitioner joined the service and made an application for payment of back-wages. The Deputy Commissioner, Hazaribagh rejected the application holding that petitioner is not entitled to back-wages and against that order petitioner again moved in appeal before the Commissioner, North Chhotanagpur Division, Hazaribagh. The Commissioner confirmed the previous order and held that the petitioner was rightly refused the wages for the period in question for the reason that he was not completely exonerated from the Disciplinary proceeding, rather it was ended in minor punishment. I do not find any illegality or impropriety in the said order.

11. For the reason aforesaid there is no merit in this writ application, which is accordingly dismissed.

12. Petition dismissed.