
Lalan Sharma Vs State of Jharkhand and Others

Writ Petition (S) No. 2936 of 2007

Court: Jharkhand High Court

Date of Decision: Oct. 9, 2009

Citation: (2010) 124 FLR 1041

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Advocate: Satya Prakash Sinha, for the Appellant; Nehala Sharmin, J.C. to SC-I, for the Respondent

Final Decision: Allowed

Judgement

D.G.R. Patnaik, J.

Heard learned Counsel for the petitioner and learned Counsel for the respondent-State.

The petitioner in this writ application has prayed for a direction to the respondents to pay him his salary which has been withheld for the period

5.12.2005 to 9.10.2006. Earlier, the petitioner had approached this Court by filing a writ application vide W.P. (S) No. 1360 of 2006 for a

direction to the respondents to accept his joining at Chakulia Sub-Division with effect from 10.12.2005 and to pay him the arrears of salary. The

writ application was disposed of by order dated 13.6.2006 with a direction to the concerned authorities of the respondents to serve a copy of the

relieving order. If the same was issued by the concerned authorities prior to 10.12.2005 i.e. the date on which the petitioner has claimed to have

submitted his joining at transferred post at Chakulia. A further observation was made in the order that if any adverse decision is taken against the

petitioner the authorities concerned shall communicate the grounds to the petitioner.

2. Learned Counsel for the petitioner submits by referring to a copy of his joining letter (Annexure-3) that in compliance with the order of his

transfer, the petitioner had submitted his joining at his transferred post at Chakulia. In spite of the joining letter the petitioner was not allowed to

work and neither to sign on the attendance register, only on the plea that the petitioner had not produced his relieving order from his previous place

of posting. The petitioner thereafter filed his representation (Annexure-9) before the concerned higher authorities of the respondents and in

response, he was informed by letter dated 28.7.2006 (Annexure-7) that the relieving order purportedly passed on 23.12.2005. was annexed with

the letter. However, to the petitioner's surprise, no such enclosure was found along with the letter and the petitioner thereafter promptly informed

the concerned authorities about absence of the enclosures to the letter. However, even in absence of the relieving order but on the basis of the

order of transfer and the communication forwarded to the petitioner by the Executive Engineer vide letter dated 28.7.2006. The petitioner was

allowed to join his duties at Chakulia on and from 10.10.2006.

Learned Counsel submits that the petitioner has apparently been victimized and though he had offered himself for performing his duties at the place

of his transfer but he was deliberately kept off and no work was offered to him. Such mala fide action appears to have been taken only on account

of the grudge and malice maintained by the respondents on account of the writ application which the petitioner had filed before this Court.

3. Learned Counsel for the respondents, on the other hand, while inviting attention to the statements contained in the several paragraphs of the

counter-affidavit, would want to argue that the petitioner was transferred from Noamundi to Chakulia by order dated 25.11.2005. However the

order of relieving from his post was not promptly issued and it was eventually passed on 23.12.2005. Only on the basis of the transfer order and

without receiving the relieving order, the petitioner appeared before the concerned authorities of Chakulia on 10.12.2005 submitting his joining and

the same was rightly rejecteu since the petitioner did not produce the relieving order. Learned Counsel explains further that despite being relieved

on 23.12.2005 and a copy of the order being dispatched to him, the petitioner thereafter did not present himself for joining at his transferred post

at Chakulia and continued evading his joining for about one year and ultimately submitted his joining in October, 2006. Since the petitioner did not

work for the period between 25.11.2005 to 22.12.2006, he did not deserve any salary on the principle of "no work no pay".

4. From the rival submissions as it appears, the petitioner was though transferred from Noamundi to Chakulia by order dated 25.11.2005, he was

not promptly served with his relieving order from his place of posting. As it appears, upon receiving the order of his transfer, the petitioner

promptly proceeded to join his post at the transferred place, but he was not allowed to join.

5. Learned Counsel for the respondents informs that the copy of the order of transfer was communicated for information to the concerned officer

at the place of transfer and the relieving order was also communicated to the authorities concerned at the transferred place. This submission only

indicates that the concerned authorities of the transferred place were made aware not only of the fact that the petitioner was transferred from

Noamundi to Chakulia but also that he was relieved from his post, on 23.12.2005.

6. Referring in this context to the petitioner's statements declared on affidavit, his contention is that he had presented himself before the concerned

authorities at Chakulia on 10.12.2005 and thereafter he continued presenting himself regularly but he was not allowed to join duty. His further

contention is that he had submitted his representation before the superior officers of the department explaining the circumstance under which he

was not allowed to join duty and in response he was informed that he was already relieved from duty on 23.12.2005 and a direction was given to

him to join his duty at the transferred place. The petitioner has further claimed that no enclosure to the letter was received by him and against which

fact, he had also informed to the concerned higher authorities though subsequently even without production of any relieving order, the petitioner

was allowed to join duty at Chakulia.

7. These statements declared on affidavit by the petitioner do not appear to have been controverted or denied by the respondents by any

supplementary statement on affidavit.

8. Be that as it may, it is apparent that even without the petitioner submitting any relieving order, he was allowed to join duty in the month of

October, 2006. If it was possible for the concerned authorities to allow the petitioner to join duty without production of the relieving order in

October, 2006 then it is not understood as to why he could not have been allowed to join duty earlier after the order of his transfer was

communicated to the concerned authorities of Chakulia, atleast on or after the date of 23.12.2005 i.e. the date on which the relieving order was

passed by the concerned authorities of Noamundi and communicated to the concerned authorities at Chakulia.

The specific stand taken by the petitioner in the present writ application is that he had reported in the office at Chakulia not only on 10.12.2005 but

also on subsequent dates regularly, was stated by the petitioner not only in the earlier writ application but also in his letter addressed to the superior

officers of his department. In the light of such consistent claim of the petitioner and in absence of any specific denial of such statement, it has to be

accepted that the petitioner did present himself before the concerned authorities at his transferred place at Chakulia regularly even after the date

when the formal order of his relieving was passed by the concerned authorities of Noamundi and his joining was not accepted only on the ground

that he could not produce the relieving order. There is no affirmed statement on behalf of the respondents that the relieving order which is claimed

to have been passed on 23.12.2005 was effectively served upon the petitioner.

9. The facts discussed above clearly indicate that the petitioner was not allowed to join duty and work during the entire period only on the plea that

he could not produce his relieving order although the petitioner did present himself offering his services to perform his duty. The stand taken by the

respondents that the petitioner did not work and therefore not entitled for any salary for the disputed period on the principle of "no work no pay",

cannot be attracted to the detriment of the petitioner.

10. Under the circumstances, this application is allowed. The respondents are directed to release and pay to the petitioner the arrears of salary

payable to him for the period between 5.12.2005 to 9.10.2006 within three months from the date of this order.

Let a copy of this order be given to the Counsel for the respondent-State.