Sahdeo Sah Vs State of Bihar and Others

Court: Jharkhand High Court

Date of Decision: March 3, 2003

Acts Referred: Bihar Service Code, 1952 â€" Rule 74, 97(2), 99
Constitution of India, 1950 â€" Article 226

Citation: (2003) 2 JCR 174

Hon'ble Judges: Vikramaditya Prasad, J

Bench: Single Bench

Advocate: Anjani Kumar Verma, Kumar Manish and Rajeev Nandan Prasad, for the Appellant; G.P. IV, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Vikramaditya Prasad, J.
This writ has been filed for a direction upon the respondents to release the retiral dues statutory and penal interest

thereon to the petitioner.

2. Short facts of this case are that the petitioner was a Jan Sevak in Karon Block of Deoghar District He was arrested in connection with a criminal

case (which has no concern with any departmental matter) bearing Pirpainti RS. Case No. 127 of 1995 on 1.12.1995. Consequent thereto, the

petitioner was suspended w.e.f. 1.12.1995 (Annexure-1). The petitioner was released from jail custody on 16.7.1999 and he joined his office on

17.7.1999. No departmental proceeding was pending against him and thereafter he superannuated on 31.7.1997. The grievance of the petitioner is

that during his period of suspension he was not given subsistence allowances consequently his family suffered and even after the retirement, the

retiral dues has not been paid to him.

3. The respondents appeared and filed counter affidavit on 21.3.2002 annexing Annexures-A to E. Annexure-A shows that a sum of Rs.

1,02.431.00 has been paid to the petitioner towards G.P.F. for the period from 1982-83 as on date along with upto date interest. It has further

been said that he has not been paid any amount thereafter since the balance for the period has not been transferred from the office of the

Accountant General, Bihar Annexure-B shows the payment of Group Insurance amounting to Rs. 26,420.00 i.e., admissible amount under this

head. Annexure-C is the receipt given by the petitioner on 1.4.2000 which appears from his signature on the stamp affixed, on this document and

this document is with regard to the payment of the salary for the period from January 93 to November 1995 along with increment. Thus the salary

has been paid for the period prior to his arrest or suspension. Annexure-D is a document with regard to the payment of suspension allowances for

the period from 1.12.1995 to 16.7.1999 amounting to Rs. 1,41,350.00 this amount has been received by the petitioner vide Cheque No. 132075

dated 18.4.2001 as per his endorsement made on this document. Annexure-E is the document with regard to the payment of salary for the period

from the date of re-instatement/joining of the petitioner after being released from jail i.e. 17.7.1999 to 31.7.1999, the date of his superannuation

and this amount has been received by the petitioner on 18.4.2001 vide Cheque No. 132075 dated 18.4.2001. Excepting gratuity most of the dues

have been paid and only the salary for the suspension period has not been paid and withheld. The stand of the respondents is that it has been

withheld according to law and rules.

4. Undisputedly the petitioner was in jail from 1.12.1995 to 16.7.1999. No formal order revoking the suspension was passed though the payment

for the period from the date of his, submitting joining after being released on bail to the date of his superannuation has been paid (Annexure-E),

which indicates that even though order revoking his suspension was not passed his joining was accepted and he was also paid the salary for the

period thereafter till his superannuation. Thus he did not superannuate under suspension and the question of merging his suspension with his

retirement does not arise.

5. Now the only question in this aforesaid circumstance is whether the salary for the period till he remained in jail and did not rejoin his post, can be

paid to him? Admittedly the petitioner was in jail and not on duty during that period. As he was facing criminal trial, no order under Rule 74 of the

Bihar Service Code could be passed till the result of the trial was known to the authority and they could not have decided whether during the

period of suspension the petitioner could be treated on duty. Therefore, the salary for the period has been rightly withheld.

6. So far leave encashment is concerned, it can be withheld only if the government servant has either voluntarily sought retirement or has been

compulsorily retired as per government letter No. 3PAR 1/86/326B dated 27.1.87. The petitioner''s claim of leave encashment till the period he

was not suspended is not restricted by the letter. So the petitioner is entitled to that. The leave for the period of suspension can only be earned if

the period is treated on duty.

7. So far gratuity is concerned, he may be paid admissible gratuity till the date of his suspension. Such dues for the suspension period will depend

upon the order to be passed with regard to his being treated on duty or not, consequent to the result of the criminal trial. It is directed that :

(i) The petitioner is to apprise the authority with the result of the criminal case.

(ii) Respondents on being so apprised by the petitioner will pass an order under Rule 99 read with Rule 97(2) of the Bihar Service Code and the

legal consequences shall follow in respect of salary and gratuity for that period.

(iii) In the meantime the gratuity that is admissible: as per the continued years of service prior to retirement should, be paid immediately.

(iv) As the authority had withheld the salary of the aforesaid period of suspension for the aforesaid reason, the prayer of the petitioner for grant of

statutory and penal interest thereon is refused.

With the aforesaid direction this writ is disposed of at the stage of admission itself.