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**(2002) 10 JH CK 0015**

**Jharkhand High Court**

**Case No:** Writ Petition (S) No. 139 of 2002

Manjhi Hambram and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision:** Oct. 28, 2002

**Acts Referred:**

- Bihar (Now Jharkhand) Service Code, 1952 - Rule 97

**Citation:** (2003) 1 JCR 501

**Hon'ble Judges:** S.J. Mukhopadhaya, J

**Bench:** Single Bench

**Advocate:** J.P. Jha, R.C. Kiskoo and S.P. Jha, for the Appellant; Pradip Modi, G.P. I, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

The petitioners Manjhi Hembram and Mishil Soren, have preferred this writ petition against office order, contained in Memo No. 3099 dated 10th November, 2001 issued by the Deputy Superintendent of Education, Dumka, whereby and whereunder, the respondents while revoked the order of suspension and closed the departmental proceeding, inflicted punishment that the petitioners shall not get any salary for the period of suspension.

2. It appears that the petitioners were suspended, vide Memo No, 967 dated 12th April, 2001 in contemplation of departmental proceeding. They were subsequently served with charge sheet dated 16th April, 2001. Thereafter, the impugned order of punishment issued on 10th November, 2001.

3. The case of the petitioners is that they refuted the allegations and submitted show cause reply, but without any departmental proceeding and without any

intimation relating to any date of enquiry, the order of punishment was passed.

4. The respondents in their counter-affidavit while accepted that the order dated 10th November, 2001 has been issued as a measure of punishment, took place that the charge-sheet was issued on 16th April, 2001. It is stated that the Enquiry Officer submitted report on 13th June, 2001 from which it is evident that the petitioners deposited arrears amount of Rs. 46,336/-on 17th May, 2001 after issuance of charge-sheet. It is also alleged that the petitioners were found absent from class room during working hours on 12th April, 2001 and were found sitting in the office of the Head Master.

5. It has not been disputed by the respondents that the order of punishment has not passed without completion of any departmental proceeding.

6. There is nothing on the record to suggest that any person was appointed as the Enquiry Officer, nor anything on the record to show that the petitioners were asked to appear in the enquiry on any particular date. The respondents did not choose to enclose the copy of any enquiry report to find out whether the petitioners were held to be guilty of the alleged charges or not.

7. In the facts and circumstances, the order, contained in Memo No. 3099 dated 10th November, 2001 having issued in violation of the rules of natural justice, the said order is set aside so far as it relate to the petitioners.

8. However, this order will not stand in the way of the respondents to pass orders in accordance with law.

9. So far as salary of the petitioners is concerned, the respondents will determine the same within six months as per Rule 97 of the Bihar (Jharkhand) Service Code.

10. The petitioner who is stated to have been superannuated from service, may move the competent authority for retiral benefits.

11. The writ petition is allowed with the aforesaid observations.