

(2014) 10 JH CK 0020

Jharkhand High Court

Case No: W.P. (S) No. 5032 of 2008

Parmatma Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Oct. 8, 2014

Citation: (2015) 144 FLR 49 : (2014) 4 JLR 357

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Rajesh Kumar, Advocate for the Appellant; M. Jalisure Rahman, JC to GP-III,
Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the petitioner and the State.

2. The petitioner, after his retirement on 31.01.2004 from the post of Junior Employment Officer, Department of Labour, Employment and Training, has approached this Court in the present writ petition inter alia seeking (i) release of arrears of salary from 04.02.1997 to 08.07.1998 (ii) for payment of admissible post retiral dues such as gratuity and leave encashment etc.; and (iii) for grant of ACP.

3. The respondents in their counter affidavit have brought on record office order dated 16.09.2008 bearing Memo No. 31 issued by the Directorate Employment and Training, Government of Jharkhand wherein the period of absence of the petitioner from 04.02.1997 to 08.07.1998 i.e. for 520 days, was treated as unauthorized absence. The said order has been challenged by the petitioner through interlocutory application and thereafter" incorporated as prayer in the main writ petition.

4. The contention of the petitioner is that he was appointed in the year 1972. He was transferred from Bokaro to Motihari vide office order dated 31.12.1996, Annexure-1, issued by the Directorate, Employment and Training, Government of Bihar, Patna. The petitioner did not proceed to submit his joining at the transferred place and in the meantime order of transfer was stayed vide office order dated 26.02.1998

bearing Memo No. 207, Annexure-3, issued by the Director, Employment and Training, Government of Bihar keeping into account the Lok Sabha Election 1998. The petitioner is said to have approached the Patna High Court in CWJC No. 2556 of 1997(R) against the order of the transfer. The said writ petition was, however, withdrawn by him. Learned counsel for the petitioner has submitted that the said writ petition was withdrawn on assurance of the respondents that his claim for joining may be considered only after withdrawal of the same.

5. The petitioner is said to have represented before the Directorate, Employment and Training, Government of Bihar on 25.03.1998 through proper channel stating that he had withdrawn the writ petition and had assumed charge at Sub Regional Employment Exchange, Bokaro Steel City on 27.02.1998, but he was not allowed to perform his duties. It is submitted that the petitioner was forcibly not allowed to perform his duties for the period in question, had not received any remuneration for the said period and was not allowed to mark his attendance. It is contention of the petitioner that vide another office order dated 29.06.1998, he was transferred to Sub-Regional Employment Exchange where he took charge on 09.07.1998. Thereafter he retired on 31.01.2004 from the Sub-Regional Employment Exchange, Hazaribagh as Junior Employment Officer.

6. Learned counsel for the petitioner submits that the petitioner's aforesaid period of absence should have been regularized by the respondents as he was prevented from discharging his duties for the said period though order of transfer was stayed. It is submitted that no departmental proceeding for any alleged misconduct was initiated against the petitioner and therefore, such period of absence should not be treated to be break in service. The petitioner had also submitted reply to the show cause issued on 29.02.2008, Annexure-10 by the Directorate, Employment and Training, Government of Jharkhand as to why the said period be not treated as unauthorized absence vide its reply dated -10.03.2008, Annexure-11. However, the petitioner came to know through order brought on record by the respondents in their counter affidavit that his period of absence from 04.02.1997 to 08.07.1998 has been treated as break in service. Learned counsel has relied upon the judgment rendered by the learned Single Judge of this Court in the case of Dr. Mithilesh Prasad Singh v. the State of Jharkhand and Ors. in W.P. (S) No. 1936 of 2013 vide judgment dated 29.01.2014 in support of his aforesaid contention that the period of such absence cannot be treated as unauthorized absence as there was an order of stay by the Competent Authority/he was never proceeded for any misconduct and moreover he had not been allowed to discharge his duty for the said period.

7. Learned counsel for the petitioner also submits that after passing of the reasoned order, he has also made an application for reconsideration of the reasoned order and for regularization of the said period of his absence vide Annexure-14 dated. 19.08.2014. It is submitted that under the provisions of Rule 180 and 236 of Jharkhand Service Code, extraordinary leave may be granted to the

Government servant in special circumstances when the employee concerned has made an application before the respondents as well.

8. Learned counsel for the State has resisted the prayer of the petitioner and submitted that the petitioner was in fact." asked to make an application for consideration of sanction of leave for the said period before passing of the impugned reasoned order dated 16.09.2008 which he failed to do. He in fact sought for payment for the said period. Thereafter the department had obtained opinion from the Finance Department and reasoned order has been passed which is proper in the eyes" of law in view of the specific provisions of Rule 165, 180, 236, 252, 264 and 265 of the Jharkhand Service Code. Rest of post retirement benefits have already been paid to the petitioner after considering the said period of his service as unauthorized absence and therefore, the impugned order which is legal and valid in the eyes of law, should not be interfered with.

9. I have considered the rival submissions of the parties and the contentions raised on their behalf. It appears that the petitioner was appointed in the year 1972. It further appears that the order of transfer was issued on 31.12.1996 in respect of the petitioner as well by the respondent-Directorate, Employment and Training, Government of Bihar, but that was stayed vide office order dated 26.02.1998 bearing Memo No" 207, Annexure-3, issued by the Director, Employment and Training Department, Government of Bihar. Counter affidavit of the respondents appears to have questioned the competence of the said person, who apparently was a Joint Director in the Department, who had passed the order of stay even after decision of the Establishment Committee to transfer him. However, it is also stated at para-10 of their counter affidavit that perhaps the order was issued in absence of regular Director, when he might be officiating as Director for routine work. It further appears that after stay of the order of transfer vide Annexure-3 dated 26.02.1998, next order of transfer was issued on 29.06.1998 whereafter the petitioner is said to have submitted his joining on 09.07.1998. As per the statements made in para-10 of the writ petition and also corroborated by the impugned reasoned order dated 16.09.2008, it also appears that the petitioner had preferred a writ petition before the Patna High Court in respect of the same transfer, which was withdrawn. It appears from the reasoned order that the respondents themselves have issued several letters to the petitioner seeking application for consideration in respect of grant of extraordinary leave for the period in question which. petitioner had failed to do. The petitioner however seems to have submitted reply to the show cause (Annexure-10) issued by the respondent in the year 2008 in respect of the same period of absence vide Annexure-11, taking a plea that he was entitled to salary for the said period as he had submitted his joining. after stay of the order of transfer. Provisions of the Jharkhand Service Code, specifically Rule 180 and 236, provides that in special circumstances when no other leave is admissible, extraordinary leave may be granted. Such leave is not debited against the leave account. Rule 236 of the Jharkhand Service Code which has also been relied upon by the respondents in the

impugned order provides that extraordinary leave may be granted to a Government servant in special circumstances, subject to application being made by the Government servant for grant of such extraordinary leave. Considering all the aforesaid facts and circumstances and the provisions referred to hereinabove, it appears that initially department had also contemplated seeking application from the petitioner for sanction of extraordinary leave for the said period, but due to no such application being made, the claim of the petitioner has been rejected by the reasoned order invoking relevant provisions of Jharkhand Service Code. The petitioner admittedly had remained in service from the date of his appointment in the year 1972 till his retirement on 31.01.2004. There are no other instances against the petitioner of serious misconduct during his service career: If the period in question is treated as break in service, it will have serious adverse consequence upon post retirement benefits of the petitioner though he remained in service for the period 1972 till 2004. The whole issue, therefore relating to consideration of the claim for regularization of the petitioner for the period of his absence from 04.02.1997 to 08.07.1998 requires reconsideration at the end of the respondents taking into account all relevant aspect of the matter in a sympathetic manner in accordance with law.

10. In these circumstances, the order impugned dated" 16.09.2008 is quashed and the matter is remanded to the respondents to take a fresh decision in accordance with law in respect of the aforesaid period of absence of the petitioner. The petitioner shall make a proper representation/application before the respondent No. 3-Director, Labour, Employment and Training, Government of Jharkhand in respect of such a claim duly supported with necessary facts and documents. The writ petition is allowed in the manner and to the extent indicated hereinabove.

11. Needless to say, if the decision passed upon reconsideration is in favour of the petitioner, consequential benefits of post retirement dues be conferred upon the petitioner.