

(2016) 07 JH CK 0064

JHARKHAND HIGH COURT

Case No: Writ Petition (S) No. 5454 of 2015.

Arun Kumar Singh - Petitioner
@HASH State of Jharkhand

APPELLANT

Vs

RESPONDENT

Date of Decision: July 27, 2016

Citation: (2016) 4 JBCJ 599

Hon'ble Judges: H.C. Mishra, J.

Bench: Single Bench

Advocate: M/s. Dr. S.N. Pathak, Sr. Advocate and Diwakar Upadhyay, Advocate, for the Petitioner; M/s. J.C. to A.A.G, for the State

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. H.C. Mishra, J. - Heard learned counsel for the petitioner and the learned counsel for the State.

2. The petitioner has filed this writ application challenging the order contained in memo No. 1866 dated 08.05.2015 and order contained in memo No. 2017 dated 25.05.2015, as contained in Annexures-2 and 3 of the writ application, passed by the respondent No. 4, i.e., the Superintendent of Police, Hazaribag, whereby the petitioner has been disallowed the salary for the period from the date of his dismissal, i.e., 31.01.2003 till the date of his reinstatement in service, i.e., 08.05.2015, on the principle of "no work no pay".

3. The petitioner was working as police constable and he had challenged the orders dated 31.01.2003 and 01.06.2005 in this Court in W.P.(S) No. 1861 of 2008, whereby he was dismissed from service. The said writ application was allowed by order dated 25.10.2013, as contained in Annexure-1 to the writ application, and the impugned orders of dismissal of the petitioner were quashed by this Court. The matter was remanded back to the respondent, Superintendent of Police, Hazaribag, i.e., the

disciplinary authority, for fresh consideration of the matter so far as the quantum of punishment was concerned.

4. It appears that pursuant to the order passed by this Court as contained in Annexure-1, the petitioner was reinstated in service and he was allowed to join on 08.05.2015. Though the intervening period between 31.01.2003 to 08.05.2015 has been adjusted towards his admissible leave, but by the impugned orders as contained in Annexures-2 & 3 to the writ application, the petitioner has been denied the payment of any salary for the said period on the principle of "no work no pay". It is nowhere stated in either of these impugned orders as contained in Annexures-2 & 3 of the writ application, that the petitioner was gainfully employed during this period due to which the payment of salary was denied.

5. Learned counsel for the petitioner has submitted that the impugned orders passed by the respondent No. 4, is absolutely illegal and arbitrary and is violative of Articles 14 and 21 of the Constitution of India. It is submitted that the petitioner was deprived from working due to the dismissal order passed against him, which was ultimately quashed by this Court by order contained in Annexure-1 to the writ application, and accordingly, the petitioner cannot be denied the salary during the period he was kept out of his service illegally. Learned counsel accordingly, submitted that the impugned orders cannot be sustained in the eyes of law.

6. Learned counsel for the State on the other hand has opposed the prayer and has pointed out from the counter affidavit filed on behalf of the State that the salary of the petitioner has been denied only on the principle of "no work no pay". It is stated that otherwise the continuity of the service of the petitioner has been maintained and the intervening period, i.e., 31.03.2003 to 08.05.2015 has been regularised by granting him extra ordinary leave in order to prevent the break in service of the petitioner.

7. Having heard learned counsels for both the sides and upon going through the record, I find that neither in the impugned order nor in the counter affidavit filed on behalf of the State Government, it is stated that the salary of the petitioner during the intervening period between the date of his dismissal and the date of his reinstatement has been denied due to the fact that the petitioner was gainfully employed elsewhere. It is not even the case of the respondent State that the petitioner was employed gainfully elsewhere during that period. That being not the position, I am of the considered view that the petitioner is fully entitled to get his salary for the entire period during which he was out of service, due to the order of dismissal passed by the respondent authorities, which was ultimately quashed by this Court and the petitioner was reinstated back in the service.

8. In view of the aforementioned discussions, the respondent authorities are directed to release the salary of the petitioner for the period from 31.01.2003 till the date the petitioner was reinstated in service. The respondent authorities are

directed to release the salary of the petitioner positively within the period of six weeks from the date of communication/production of the copy of this order.

9. This writ application is accordingly allowed, with the directions as above.