

Surari Ghosh Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jan-10-2017

Appellant : Surari Ghosh

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 983 of 2011
----- Suravi Ghosh @ Surari Ghosh wife of late Shankar Kumar Ghosh, resident of Shanti Nagar, P.O and P.S. Tatmatoli, District Purnea (Bihar) ... Petitioner Versus 1.The State of Jharkhand through Secretary, Home Department, Project Building, H.E.C, P.O and P.S. Dhurwa, District: Ranchi. 2.Director General-cum-Inspector General of Police, Government of Jharkhand, H.E.C, P.O and P.S. Dhurwa, District Ranchi. 3.Inspector General of Police (Rail), Government of Jharkhand, H.E.C., P.O and P.S. Dhurwa, District Ranchi. 4.Deputy Inspector General of Police (Rail), Government of Jharkhand, H.E.C., P.O and P.S. Dhurwa, District Ranchi. 5.Superintendent of Police (Rail), Dhanbad, P.O and P.S. Dhanbad, District Dhanbad. 6.Superintendent of Police (Rail), Jamshedpur, P.O and P.S. Jamshedpur, District Jamshedpur. . Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Sumeet Gadodia, Advocate. Mr. Prem Pujari Roy, Advocate For the Respondents : Mr. Chanchal Jain, J.C to A.A.G ----- C.A.V on 29.09.2016 Delivered on 10/01/2017 Per Pramath Patnaik, J.: In the accompanied writ application, the petitioner has inter alia prayed for direction upon the respondents to pay arrears of

salary of her deceased-husband from the date of termination till the date of superannuation and also prayed for payment of retiral benefits of her late husband with interest and further prayer has been made for quashing memo dated 28.03.2003 whereby entire amount of pension and gratuity of her deceased husband has been forfeited in the garb of Rule 43(b) of the Jharkhand Pension Rules. 2 2. Sans details, the facts as emanated from the averments of the writ application is that against the husband of the petitioner, who was appointed as Sub-Inspector of Police in the year 1965, while posted as Officer-in-Charge, Dhanbad G.R.P.S., a criminal case was instituted under Sections 409, 479, 201 and 120 B of the Indian Penal Code on the allegation that he conspired in stealing of seized coal kept near the Ranchi Railway Station Godown Shed. Pursuant thereto, a departmental proceeding no. 20 of 1981 was also initiated against him on the self-same charge, which led to dismissal of the petitioner vide order dated 14.08.1987, against which, the husband of the petitioner preferred appeal, which was also dismissed. Being aggrieved, the husband of the petitioner knocked the door of this Court by filing C.W.J.C No. 863 of 1996 (R), which was disposed of vide order dated 5.08.2002 by setting aside the impugned order of dismissal taking into account that the delinquent has been acquitted in criminal case vide judgment dated 07.07.1995 and further direction was given to the respondents to proceed afresh from the stage of furnishing copy of enquiry report to the delinquent. In compliance thereof, the respondent no. 6- Superintendent of Police (Rail), Jamshedpur vide memo dated 05.02.2003 reinstated the petitioner in services and copy of enquiry report was also served upon him seeking reply thereof. It has further been averred that though the order of reinstatement was passed by the respondents-authorities but though the husband of the petitioner had already superannuated from services w.e.f 01.03.2001, proceeding under Rule 43(b) was initiated against him which 3 culminated in passing of impugned order dated 28.03.2003 whereby entire amount of pension and gratuity of her deceased husband has been forfeited.

3. Learned counsel for the petitioner submitted that when the criminal case, which is genesis of very initiation of departmental proceeding, goes in view of the acquittal of husband of the petitioner and furthermore, the Honble High Court vide order dated 5.08.2002 set aside the order of termination, the impugned order

dated 28.03.2003 whereby entire amount of pension and gratuity of her deceased husband has been forfeited has no leg to stand and is liable to quashed in limine. Questioning the initiation of proceeding under Rule 43 (b), learned counsel for the petitioner submitted that instead of initiating fresh proceeding under the relevant Rule, the respondents continued with the proceeding initiated against the delinquent, which was initiated prior to his superannuation. Further, on the point of jurisdiction of the authorities to pass order under Rule 43 (b), learned counsel for the petitioner submitted that under Rule 43(b) it is the State Government who has power to pass necessary order regarding forfeiture of the amount of pension and gratuity but it has been passed by the authority, who is bereft of such power, and moreover, the impugned order has been passed without coming to the conclusion that the alleged act of misconduct committed by the late husband of the petitioner was falling under the scope and ambit of grave misconduct or any pecuniary loss has been caused to the Government by his alleged misconduct or negligence. 4 4. It has further submitted that since order of reinstatement was passed by the respondents-authorities themselves then the petitioner is deemed to be in service from the date of termination till the date of his superannuation and hence the petitioner is entitled for the payment of that period. In support of his submission, learned counsel for the petitioner referred to the decision rendered in the case of Binoda Nand Jha Vs. Union of India as reported in (2009) 2 JLR41 wherein the Honble Court has been pleased to hold that when the order of dismissal has been quashed by Writ Court, separate order for payment of intervening period does not arise and direction was given to pay the salary for the intervening period. Learned counsel further referred to the decision rendered in the case of Chandreshwar Prasad Sinha vs State of Bihar & Anr as reported in (2001) 9 SCC369 5. As against this, learned counsel for the respondents-State submitted that reinstatement of the petitioner vide order dated 05.02.2003 in services was a mistake on the part of authorities, as at the relevant time the service book of the husband of the petitioner was missing, hence, the petitioner cannot take advantage of that mistake. Even otherwise also, when the petitioner had already superannuated from services on 28.02.2001, the question of reinstatement does not arise. However, when this fact has come to knowledge of the authorities, the respondent-authority converted the departmental proceeding under Rule 43 (b) of

the Jharkhand Pension Rule, in which, sufficient opportunity was granted to the delinquent to submit his 5 explanation but it is the husband of the petitioner who did not choose to submit his reply and pursuant thereto notice was served upon him. Under such circumstances, the explanation submitted earlier and on the basis of documents available on record, the impugned order dated 28.03.2003 was passed finding the husband of the petitioner guilty under Rule 43(b) of the Jharkhand Pension Rule read with Rule 27 of the said Rule. Learned counsel for the State further submitted that departmental proceeding was continued in compliance of order of this Honble Court dated 05.08.2002 passed in CWJC No. 863 of 1996(R) as the Honble Court remanded the matter back to start the proceeding from the stage of serving copy of enquiry report and in compliance thereof the proceeding was started after serving copy of enquiry report. So far the salary for the intervening period is concerned, the petitioner is not entitled to on the established principle of No Work No Pay, as the husband of the petitioner was never exonerated in the departmental proceeding. It has been submitted that there was no requirement of starting a fresh proceeding under Rule 43(b) of the Jharkhand Pension Rules as if the fresh proceeding would have been initiated, the order dated 05.08.2002 passed in CWJC No. 863 of 1996(R) had become infructuous.

6. After bestowing my anxious consideration to submissions advanced by learned counsel for the parties and on close scrutiny of the materials available on record, it come to surface that when the order 05.08.2002 was passed by this Court in CWJC No. 863 of 1996(R), this Court was not cognizant of the fact that in the 6 meantime, the petitioner have superannuated from services, hence, this Court on the strength of violation of principles of natural justice for non-supply of enquiry report and acquittal of the petitioner in criminal case, quashed the order of termination and directed to start a fresh enquiry and the respondents- authorities in compliance thereof passed the order of reinstatement and started proceeding from the stage of supply of enquiry report and passed the impugned order dated 28.03.2003 whereby entire amount of pension and gratuity of her deceased husband has been forfeited under Rule 43(b) of the Jharkhand Pension Rules.

7. Be that as it may be, now much water has flown, even if the submission of the learned counsel for the petitioner, to the effect that no fresh proceeding under rule 43 (b) was initiated, is tested on litmus paper, in the peculiar facts and circumstance of the case no purpose would be served. Hence, in the fitness of things, the impugned order dated 28.03.2003 whereby entire amount of pension and gratuity of her deceased husband has been forfeited, is liable to be quashed and set aside. So far as case laws cited by learned counsel for the petitioner is concerned, in the facts and circumstances of the case, it is not applicable in the case at hand.

8. In the result, the impugned order dated 28.03.2003 whereby entire amount of pension and gratuity of her deceased husband has been forfeited is hereby quashed and set aside and the respondents-authorities are directed to pay the pensionary benefits including pension, gratuity, earned leave encashment, provident fund, group insurance etc. taking into account that the 7 petitioner rendered services from 1965 till 1987 and so far as payment of arrears salary of her deceased-husband from the date of termination till the date of superannuation is concerned in facts and circumstances of the case and on the principle of no work no pay, he is not entitled to for the same, however, that period shall be taken into consideration for the purpose of computation of pension etc.

9. With the aforesaid observations and directions, the writ petition stands disposed of. (Pramath Patnaik, J.) Alankar/-

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