

Rekha Devi Agrawal Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jun-20-2017

Appellant : Rekha Devi Agrawal

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 2333 of 2010
----- Rekha Devi Agrawal W/o Murlidhar Agrawal, D/o late Shyam Sundar Lal, resident of Upper Bazar, Mahavir Chowk, Lohardaga, PO, PS and District-Lohardaga Petitioner -Versus- 1. The State of Jharkhand 2. The District & Sessions Judge, Hazaribagh 3. The Registrar, Civil Court, Hazaribagh....
Respondents ----- CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR ----- For the Petitioner : Mr. Anil Kumar, Adv. Mr. Raj Kumar Gupta, Adv. For the Resp.-State : Mr. Arbind Kumar, JC to G.P-II -----
19/20.06.2017 During pendency of the writ petition, the original petitioner died and vide order dated 20.12.2012 his daughter namely, Rekha Devi Agrawal has been substituted.

2. Seeking a direction for payment of salary during suspension period and for payment of retiral benefits, the original petitioner approached this Court. He was put under suspension vide order dated 30.06.1986 and a departmental proceeding was initiated on the allegation of fraud, forgery, manipulation of accounts and defalcation of fine amounts. He superannuated from service with effect from 31.01.1997. A criminal case was lodged against him vide G.R. Case No.1636 of

1986 for committing offences under sections 409, 420, 486, 120-B of Indian Penal Code and he was convicted for the aforesaid offences. He was sentenced to undergo R.I. for 3 years for the major offences with fine of Rs.5000/-. He preferred Criminal Appeal No. 33 of 2000 against the judgment and order dated 02.02.2000 passed in T.R. No.40 of 2000. He died on 12.05.2012.

3. The learned counsel for the petitioner contends that on death of the original writ petitioner, the departmental enquiry stands concluded and the order of suspension would stand automatically revoked entitling him to full salary and allowances.

4. Rule-97 of the Jharkhand Service Code, 2001 reads as under:

97. (1) When a Government servant who has been dismissed, removed, or suspended, reinstated, the authority competent to order the reinstatement shall consider and make specific order- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty, and (b) whether or not the said period shall be treated as a period spent on duty. [(2) Where the authority mentioned in sub-rule (1), is of opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled has he not been dismissed, removed or suspended, as the case may be. (3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe: Provided that the payment of allowances under Clause (2) or Clause (3) shall be subject to all other conditions under which such allowance are admissible. (4) In a case falling under Clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes. [(5) In a case falling under clause the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose: Provided that if the Government servant so desires such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.] Rules 43 and 139 of the Jharkhand Pension Rules read as under:

43. (a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive. [(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement: Provided that - (a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment; (i) shall not be instituted save with the sanction of the State Government; (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and (iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made; (b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and (c) the Bihar Public Service Commission, shall be consulted before final orders are passed. Explanation.- For the purposes of the rule- (a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and (b) judicial proceedings shall be deemed to have been instituted:- (i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and (ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court.

139. (a) The full pension admissible under the rules is not to be given as a matter of course or unless the service rendered has been really approved. (b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper. (c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the petitioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed.

5. In view of the aforesaid statutory provisions, no direction for payment of full salary and allowances for the period of suspension and for payment of retiral benefits can be passed, at this stage. All that can be done in the present proceeding, is to direct the Principal District and Sessions Judge, Hazaribagh-respondent no.2 to take a decision in the matter in the light of the aforesaid statutory provisions. Let such decision be taken within a period of 8 weeks.

6. The writ petition stands disposed of, with the aforesaid direction to the respondent no.2 (Shree Chandrashekhar, J.) sudhir

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