

Arun Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Oct-12-2017

Appellant : Arun Kumar

Respondent : State of Jharkhand and Ors

Judgement :

1. IN THE HIGH COURT OF JHARKHAND, RANCHI W.P.(S) No. 1327 of 2012
Arun Kumar, S/o late S.P.Sinha, resident of Road No.6C(East), Mahadevpuri,
Gardanibagh, PO & PSGardanibagh, DistrictPatna (Bihar). Petitioner Versus
1.The State of Jharkhand 2.The Secretary, Personnel & Administrative Reforms
Department, Government of Jharkhand, Project Building, PO & PSDhurwa, Distt.
Ranchi 3.The Secretary, Animal Husbandry & Fishery Department, Government of
Jharkhand, Nepal House, PO& PSDoranda, DistrictRanchi 4.The Secretary,
Labour Enforcement and Training Directorate, Government of Jharkhand, Project
Building, PO&PSDhurwa, DisttRanchi 5.The Director, Animal Husbandry & Fishery
Department, Govt. of Jharkhand, Nepal House, PO & PSDoranda, DistrictRanchi
6.The Treasury Officer, Secretariat Treasury, Doranda, PO & PSDoranda,
DistrictRanchi 7.The Accountant General (A&E), Jharkhand, PO & PSDoranda,
DistrictRanchi 8.The State of Bihar, through the Secretary, Animal Husbandry
Department, Bailey Road, PO & PSBailey Road, DistrictPatna . Respondents
CORAM : HONBLE MR. JUSTICE SHREE CHANDRASHEKHAR For the
Petitioner : Mr. Rahul Kumar, Advocate For the State of Bihar : Mr. Binit Chandra,
JC to GA(Bihar) For the State of Jharkhand : Mr. Rahul Kamlesh, JC to SCII 5/

12.10.2017 Aggrieved of order dated 11.04.2011 by which an amount of Rs.2,65,482/ has been recovered from the gratuity payable to him, the petitioner has approached this Court.

2. The petitioner was appointed as Clerk in Labour, Enforcement and Planning Directorate under the State of Bihar on 17.07.1981. He was sent on deputation, in the year 1995, to the Animal Husbandry Department. He was placed under suspension on 03.04.2000 and his cadre was provisionally allocated to the State of Jharkhand after bifurcation of the erstwhile State of Bihar

2. on 15.11.2000. The petitioner joined Department of Animal Husbandry under the State of Jharkhand on 18.11.2000 and continued to discharge his duty. He was paid full salary and allowances commensurate to his post. In the departmental proceeding which was initiated by serving a chargememo to the petitioner and appointment of an enquiry officer on 30.07.2003, charges against him have been found proved. By an order dated 01.10.2007, the petitioner has suffered the following punishment: (i) Stoppage of two annual increments with cumulative effect, (ii) Debarment from promotion for five years, (iii) Recovery of unadjusted Rs.8,555/ in three installments and (iv) he has been denied payment of full salary and allowances except subsistence allowance for the period during which he remained suspended. The petitioner superannuated from service on 31.03.2009. On 01.04.2011 an amount of Rs.3,03,463/ was sanctioned for payment to the petitioner as gratuity, however, Rs.2,65,482/ has been recovered from the gratuity payable to the petitioner on account of excess payment for the period between 03.04.2000 to August, 2002 during which period the petitioner continued to draw full salary and allowances though he was placed under suspension.

3. Contending that the order of suspension was never communicated to the petitioner and he continued to discharge his duty for which he was paid full salary and allowances, Mr. Rahul Kumar, the learned counsel for the petitioner submits that deduction of Rs.2,65,482/ from the gratuity sanctioned to the

3. petitioner is illegal. It is submitted that after superannuation of the petitioner from service without resorting to Rule 43(b) of Bihar Pension Rules or satisfying the conditions under section 4(6) of the Payment of Gratuity Act, 1972, deduction

from gratuity payable to the petitioner is not permissible in law.

4. The learned State counsel supporting the impugned order submits that by order dated 03.04.2000 vide Annexure'B' to the counteraffidavit of respondent no.2, the petitioner was placed under suspension, still he continued to draw full salary till August, 2002.

5. Section 7(3) of the Payment of Gratuity Act, 1972 mandates that the employer shall arrange payment of gratuity within 30 days from the date it becomes payable to the employee. Section 13 provides that gratuity payable to an employee is not liable to attachment in execution of any decree or order of any civil/ revenue, criminal court. Section 14 mandates that provisions under the Act shall have overriding effect over any other enactment or instruction or contract contrary to the provisions of the Act. However, subsection 6 of section 4 carves out an exception under which gratuity payable to an employee can be forfeited partly or wholly. Subsection 6 of section 4 to the Payment of Gratuity Act, 1972 reads as under :
4.(6) Notwithstanding anything contained in subsection (1), (a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property

4. belonging to the employer shall be forfeited to the extent of the damage or loss so cause; (b) the gratuity payable to an employee [may be wholly or partially forfeited] (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

6. Clause(a) to subsection 6 of section 4 provides that gratuity payable to an employee can be forfeited on account of damage or loss caused to the employer, to the extent of damage or loss so caused. Payment of Rs.2,65,482/ to the petitioner which was paid to him during period of suspension between the period 03.04.2000 to August, 2002 is in excess to the subsistence allowance payable to the petitioner. It is not in dispute that the petitioner received this payment as full salary and allowances, though he was entitled for subsistence allowance only. The

petitioner has raised a plea that the order of suspension dated 03.04.2000 was not communicated to him. The respondents, however, have taken a plea that with connivance of the petitioner the said order was not communicated to the office of the Animal Husbandry and Fisheries, Bihar, Patna. The respondents have produced a copy of order dated 03.04.2000. Now, in view of the suspension order mere discharge of duty by the petitioner till 06.08.2002 when it was revealed that the petitioner was placed under suspension on 03.04.2002, the petitioner would not become entitled for full salary and allowances. The petitioner came to this Court in W.P.(S) No.5498 of 2004 for revocation of suspension order dated 03.04.2000. The writpetition stood disposed of by an order dated 03.07.2006 with a direction for conclusion of the departmental proceeding against the 5. petitioner within four months. The petitioner has suffered penalty order dated 01.08.2007 in the departmental proceeding. By the said order the petitioner has been denied payment of full salary except, subsistence allowance for the period during which he remained suspended. Under Rule 96 of the Jharkhand Service Code, the government employee who is placed under suspension is entitled for payment of subsistence allowance. Production of order dated 03.04.2000 by which the petitioner was placed under suspension and which order was challenged in the previous writ proceeding, a presumption of validity of the said order under section 114 of the Indian Evidence Act, 1972 would arise. 7. On admitted facts, when it is found that the petitioner was entitled for subsistence allowance only during the period between 03.04.2000 to August, 2002, however, he continued to draw full salary and allowances, payment made in excess of the subsistence allowance must be held loss caused to the department. In that view of the matter, deduction of Rs.2,65,482/ from the gratuity payable to the petitioner is sustained under section 4(6)(a) of the Payment of Gratuity Act, 1972. On initiation of proceeding under Rule 43(b) of Jharkhand Pension Rules, suffice would be to indicate that once payment of salary beyond subsistence allowance is admitted by the petitioner, the respondentState was not required to initiate a proceeding under Rule 43(b) of Jharkhand Pension Rules. 8. The instant writpetition stands dismissed. (Shree Chandrashekhar, J.) SI/ , AFR