

Ram Balak Singh Vs. State of Bihar and Ors

Ram Balak Singh Vs. State of Bihar and Ors

SooperKanoon Citation : sooperkanoon.com/68200

Court : Jharkhand

Decided On : Jan-29-2016

Appellant : Ram Balak Singh

Respondent : State of Bihar and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 3198 of 2008
Ram Balak Singh Son of Musafir Singh, Resident of Village Atia, P.O. Kosla, P.S.
Bodh Gaya, District Gaya (Retired Sangrahaak (Tahsildar) from department of
Irrigation (Revenue) in the office of Deputy Collector, Garhwa.) Petitioner
Versus 1. State of Bihar.

2. State of Jharkhand.

3. Under Secretary, Department of Irrigation and Water Resources, Bihar, Patna 4.
Director, Department of Revenue, Jharkhand, Ranchi.

5. Deputy Commissioner, Garhwa, Jharkhand.

6. Deputy Commissioner Revenue, Garhwa . Respondents ----- CORAM:
HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : M/s Dr.
S.N. Pathak, Sr.Adv. & Satish Kumar For the Respondent no.2, 4 to 6 : Mr. Srijit
Choudhary, Sr. S.C-III For the State of Bihar : Mr. Pankaj Kumar, J.C. to
G.A(Bihar) ----- th 7/Dated:29 January, 2016 Per Pramath Patnaik, J.:

1. In the instant writ application, the petitioner has inter alia prayed for quashing the order dated 18.05.2001 vide Annexure-4 to the writ application passed by the Under Secretary, Department of Irrigation and Water Resources, Bihar Patna and for issuance of writ of mandamus to return the recovered amount of salary of the petitioner to the tune of Rs.11,265/- and for direction to the respondents to pay the arrears of salary of the suspension period i.e. 1981 to 1995 in the revised scale and also the dearness allowances for the same period and the benefits of Assured Career Progression on completion of 12 years and 24 years of regular service.

2. The facts as disclosed in the writ application in nutshell is that initially the petitioner was appointed as a Sangrahaak (Tahsildar) in the year 1968. From 1968 to 1978 the petitioner was posted in the district of Purnea, Saharsa and Budhma Tahsil in erstwhile State of Bihar. While posted at Budhma Tahsil, Saharsa, the petitioner was placed under suspension on the ground of misappropriation of money to the tune of Rs.11,265/-. A departmental proceeding was also initiated against the petitioner and on the same set of facts the criminal proceeding was also initiated against the petitioner by lodging an F.I.R under Section 409 I.P.C. It has been stated in 2 the writ application that in the departmental proceeding petitioner was neither given the copy of enquiry report nor any document was served to him to rebut the charges. Thereafter, the order of suspension was revoked in the year 1995. In the departmental proceeding, an order was passed vide order dated 30.07.1996 by the Special Officer cum Deputy Secretary, Bihar, Patna, wherein it is stated that the order of departmental proceeding shall be subject to the result of the criminal case. Thereafter on being released from the suspension the petitioner worked in the district of Garhwa till his date of superannuation i.e. 31.10.2002. It is submitted that in the criminal case the petitioner has been acquitted under Section 409 of the I.P.C and after the order of acquittal the department had issued an order dated 18.05.2001 inflicting punishment on the petitioner with direction not to refund the alleged recovered amount and not to pay the arrears of salary of the suspension period, which is impugned in the writ application. Being aggrieved by the order dated 18.05.2001 (Annexure-4) the petitioner submitted representation. The said representation did not evoke any response. The petitioner left with no alternative and efficacious remedy, approached this Court under Article 226 of the Constitution of India for

redressal of his grievance.

3. A counter affidavit has been filed on behalf of respondents-State of Jharkhand controverting the averments made in the writ application. It has been inter alia submitted that so far as benefits regarding ACP is concerned, the petitioner has already been given the benefits of 1st and 2nd ACP vide memo dated 14.02.2005 and after due calculation the revised pension and revised gratuity amount along with arrears of monetary dues have been sent to the office of the Accountant General along with service book vide office letter dated 10.10.2008 by the Deputy Collector, Revenue Department, Ranchi. It has further been submitted that the departmental proceeding was initiated by the erstwhile State of Bihar and the impugned order has already been passed by the respondent no.1-State of Bihar, so no relief could be granted by the State of Jharkhand at this belated stage.

4. Heard Dr.S.N. Pathak, learned senior counsel appearing for the petitioner, Mr. Srijit Choudhary, Sr. S.C.III and Mr. Pankaj Kumar, J.C. to G.A (Bihar) appearing for the respondents.

5. Learned senior counsel appearing for the petitioner has submitted with vehemence that that the impugned order is not sustainable in view of the 3 judgment of this Court rendered in case of Lalit Mohan Rai which has also been affirmed by the Honble Apex Court. Learned senior counsel further submits that since the impugned order was passed, departmental proceeding was stayed on the ground of outcome of criminal case as per Annexure-3 to the writ petition. The petitioner has been acquitted under Section 409 of the I.P.C vide order dated 29.02.2000 by the learned Sessions Judge, Madhepura. Learned senior counsel further submits that the petitioner is entitled for salary during the period of suspension i.e.1981 to 1995.

6. During course of argument, learned senior counsel appearing for the petitioner has referred to Rule 97(1) of the Jharkhand Service Code, 2001 which is quoted hereinbelow for ready reference: 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.

7. Learned counsel for the respondents-State of Jharkhand submits that since the State of Bihar has passed the impugned order, so the State of Jharkhand has nothing to do with the matter. Although, learned counsel appearing for State of Bihar has not filed any counter but has assiduously tried to justify that the impugned order passed by the State of Bihar on the basis of available records.

8. Before delving into the merit of the matter, it would be apposite to refer to Sections 72 and 74 of the Bihar Reorganization Act, 2000, which reads as under:

72. Provisions relating to services in Bihar and Jharkhand.- (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Bihar shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Bihar unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Jharkhand:

4. Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day. (2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub- section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect. (3) Every person who is finally allotted under the provisions of sub section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Government concerned or in default of such agreement, as may be determined by the Central Government.

74. Provisions as to continuance of officers in same post.- Every person who, immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Bihar in any area which on that day falls within any of the successor States shall continue to

hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in, that successor State. Successor State has been defined in Section 2(j) of the Act which reads thus: Successor State in relation to the existing State of Bihar, means the State of Bihar or Jharkhand.

9. In view of the decision of State of Bihar vs. Arvind Vijay Bilung & Anr., which has been affirmed by the Division Bench of this Court passed in L.P.A. No.658 of 2001 reported in (2002) 1 JLJR697 after carving out the State of Jharkhand, the State of Bihar is denuded of passing any order in case of employees of the State of Jharkhand. On that ground the impugned order vide Annexure-4 is without jurisdiction in the teeth of judgment passed by this Court, which has been affirmed by the Honble Apex Court since not in consonance with Rule 72 and 74 of the Bihar Reorganization Act, 2000 and the issue is no more res integra in view of the aforesaid judgment.

10. On perusal of the impugned order dated 18.05.2001 vide Annexure-4 to the writ application, it appears that it is subject to the outcome of the criminal case, since in the meantime the petitioner has been acquitted under Section 409 of the I.P.C vide Annexure-3 to the writ application, the impugned order has lost its force on the day the petitioner was acquitted from the charge of 409 I.P.C. On that score, the impugned order under Annexure-4 is not legally sustainable. Since part of the relief prayed for by the petitioner has already been redressed, the learned senior counsel for the petitioner is confining his prayer to the recovery of an amount of Rs.11,265/- and for payment of arrears of suspension period i.e 1981 to 1995.

11. After hearing learned senior counsel appearing for the respective parties at length and on perusal of the records, I am of the considered view that the impugned order under Annexure-4 dated 18.05.2001 passed by the State of Bihar being not legally sustainable is hereby quashed and set aside and the respondents are directed to refund the amount of Rs.11,265/- to the petitioner within a period of twelve weeks taking into consideration the factum of the acquittal of the petitioner by the competent court. So far as salary for the suspension period

i.e 1981 o 1995 is concerned, the respondents are directed to consider the admissible dues for the aforesaid period, keeping in view the relevant provision and in consonance with Rule 97(1) of the Jharkhand Service Code, 2001 and other relevant rules and pass appropriate order within the aforesaid period which shall be communicated to the petitioner within said period.

12. It is needless to say if the claim made by the petitioner is found genuine and the petitioner is legally entitled to the admissible dues for the suspension period, the same shall be disbursed to him within eight weeks thereafter.

13. With the aforesaid direction, the writ petition stands disposed of. (Pramath Patnaik, J.) Saket/-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com