

Dr Brajesh Kumar Vs. The State of Jharkhand Through the Secretary Science and Technology Department and Ors

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Court : Jharkhand

Decided On : Mar-29-2016

Appellant : Dr Brajesh Kumar

Respondent : The State of Jharkhand Through the Secretary Science and Technology Department and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI L.P. A. No. 211 of 2015
Dr. Brajesh Kumar, son of late Awadhesh Kumar, resident of Opposite Patliputra Inter School, Kadamkuan, P.O. & P.S.- Kadamkuan, District-Patna, (Bihar) ...
Appellant Versus 1. The State of Jharkhand through the Secretary, Science and Technology Department, Ranchi 2. The Secretary, Science and Technology Department, Ranchi 3. The Deputy Secretary, Science and Technology Department, Ranchi 4. The Accountant General (A&E), Jharkhand, Ranchi 5. The Director, BIT, Sindri, P.O. & P.S.-Sindri, Dhanbad ... Respondents -----
For the Appellant :Mr. Manoj Tandon, Advocate Mr. Shiv Shankar Kumar, Advocate Mrs. Kumari Rashmi, Advocate For the Respondent-State : Mr. Sumir Prasad, S.C.-I
For the Respondent No. 5 : Mr. M. K. Roy, Advocate For Accountant General : Mr. S. Srivastava, Advocate -----
CORAM: HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR -----
06/Dated:

29. In March, 2016 The writ petitioner-appellant, who was denied salary for the period between 18.11.2000 to 28.02.2004 and interest on the provident fund amount from 01.09.2004 to 31.01.2007 after his failed attempt at the Writ Court, has preferred the present Letters Patent Appeal.

2. Heard the learned counsel for the parties and perused the documents on record. 3. Mr. Manoj Tandon, the learned counsel appearing for the appellant contends that once this Court quashed charge-memo dated 16.07.2004 which was issued for unauthorized absence for the period between 18.11.2000 to 28.02.2004 and the respondents were directed to settle the claim of the writ petitioner-appellant taking the date of his voluntary retirement w.e.f. 28.02.2004, the learned Single Judge fell in error in rejecting the claim of the appellant for payment of salary for the said period on the ground that the appellant did not challenge order dated 16.04.2009 whereby, the said period was regularized by adjusting earned leave/half pay leave/leave without pay.

4. Per contra, the learned counsel appearing for the respondent-State of Jharkhand reiterating the stand taken before the Writ Court supports the order passed by the Writ Court. The learned counsel submits that since the period between 18.11.2000 to 28.02.2004 has been adjusted from different leaves admissible to the appellant, a direction for payment of salary for the said period would amount to granting double benefit to the appellant.

5. At the outset, we notice that this Court in W.P.(S) No. 3079 of 2004 noticed that insofar as, allegation of absence from duty is concerned, no finding has been recorded by any competent authority. Nor does a disciplinary proceeding was initiated against the appellant, till he submitted his application seeking voluntary retirement in terms of Rule 74(B) of Jharkhand Service Code, 2001. The appellant in fact, was constrained to approach the Court on different occasions. When the salary of the appellant was withheld vide order dated 11.07.1997, he filed a writ petition being C.W.J.C. No. 68430 of 1997 and only thereafter, order dated 03.08.1998 was passed for release of the salary. The appellant again approached this Court in C.W.J.C. No. 1842 of 2003 for a direction seeking his transfer from BIT Sindri to any other Polytechnic Institute. While the case of the appellant for

transfer from BIT Sindri was pending consideration, he applied for voluntary retirement on 03.04.2003 conveying his intention to retire w.e.f. 28.02.2004. Subsequently, Charge Memo dated 16.07.2004 was served upon the appellant and he was placed under suspension vide, order dated 19.07.2004. The appellant approached this Court in W.P. (S) No. 3079 of 2004 for payment of retiral benefits w.e.f. 01.03.2004 including gratuity, G.P.F, Group Insurance etc. As noticed above, the writ petition was allowed with a direction to the respondents to settle the retiral claim of the appellant treating the effective date of his voluntary retirement as 28.02.2004. The Charge-Memo dated 16.07.2004 and the order of suspension dated 19.07.2004 which were impugned by the appellant by filing 4 interlocutory applications, were also quashed by the Writ Court.

6. After noticing the aforesaid facts, the learned Single Judge, in the present proceeding, came to the conclusion that the last pay drawn by the appellant was Rs. 21,900/- for which he was entitled as on 28.02.2004. The learned Single judge has noticed as under ; (i) Admittedly, the petitioner has been directed to retire w.e.f. 28.02.2004 and, as such, the petitioner is entitled to get the pay scale which he was entitled to get as on 28.02.2004 which was 21,900/-. (ii) The reason given by the respondents that the petitioner was unauthorizedly absent from 18.11.2000 to 28.02.2004 can also not be accepted in view of the clear-cut finding of this Court in W.P.(S) No. 3079/2004, as quoted herein above to the effect that he was not absent or absconder for the said period. (iii) The reason given by the respondents in the counter affidavit with respect to the unauthorized absence from 18.11.2000 to 28.02.2004 is absolutely contrary to the finding given by the learned Single Judge of this Court in W.P.(S) No. 3079/2004.

7. However, noticing order dated 16.04.2009 a copy of which was brought before the Writ Court vide Annexure-C to the supplementary counter-affidavit, whereby, the period from 18.11.2000 to 28.02.2004 was regularized by adjusting the said period from earned 5 leave/half pay leave/leave without pay etc., the learned Single Judge declined the prayer for a direction to the respondents to pay salary for the period between 18.11.2000 to 28.02.2004 on the ground that the appellant did not challenge order dated 16.04.2009. The approach of the learned Writ Court, in our humble opinion, was erroneous.

8. The right to receive salary is a statutory and constitutional right of an employee. The right to salary is akin to his right to property and the salary to an employee cannot be denied except, in accordance with procedure prescribed in law. Certainly, it cannot be denied on a technical plea. Once the learned Writ Court declined to accept the plea of unauthorized absence of the appellant and noticed that the Accountant General had issued pay/leave salary slip dated 16.02.2004, payment of salary to the appellant for the period between 18.11.2000 to 28.02.2004 could not have been denied to him. This Court vide order dated 25.09.2006 in W.P.(S) No. 3079 of 2004 issued a specific direction to settle the claim of retiral benefits of the petitioner and to pay all such dues within a period of three months with statutory interest wherever applicable then, more than 30 months thereafter it was not open to the respondents to pass order dated 16.04.2009 treating the period between 18.11.2000 to 28.02.2004 6 unauthorized absence from duty.

9. It is well-settled that administrative authority cannot test correctness or otherwise of the order passed by the Court. The administrative authority also cannot interpret the order of the Court in whatsoever manner he/she likes. The option available to the respondent-State, in the present case, was to challenge order dated 25.09.2006 passed in W.P.(S) No. 3079 of 2004 and not to flout the findings recorded and directions issued by the Writ Court. In fact charge-memo issued to the appellant for authorized absence from 18.11.2000 to 28.02.2004 was quashed by the Writ Court. In *S. Nagaraj and others Vs. State of Karnataka* and another reported in 1993 Supp (4) SCC595 the Honble Supreme Court has observed as under, 12.....Law on the binding effect of an order passed by a court of law is well settled. Nor there can be any conflict of opinion that if an order had been passed by a court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper.....

10. Considering the aforesaid facts, denial of salary to the appellant for the period between 18.11.2000 to 28.02.2004 has been rendered unsustainable. In fact, the appellant has been put to greater loss by adjusting alleged unauthorized period of absence from his earned leave /half leave/leave without pay. The earned leave of an employee is the statutory benefit admissible to an employee besides, salary and other benefits. The respondents vide order dated 16.04.2009 have not only denied salary to the appellant for the aforesaid period, the said period has been adjusted from different statutory benefits admissible to him including, the earned leave. This aspect has been completely overlooked by the Writ Court. Resultantly, impugned order dated 15.01.2015 warrants interference by this Court.

11. Insofar as, payment of interest over delayed payment, G.P.F and Group Insurance is concerned, the writ petitioner has rightly been given liberty to approach the authorities for the simple reason that payment of interest to the appellant would require serious adjudication on facts which may involve the issue whether there was laches and delay on the part of the respondents and whether steps were taken by the appellant for payment of such dues promptly or not. In a given case, it may also require adjudication whether the payment to the appellant was not made due to some legal impediment or circumstances beyond the control of the respondents. 8 12. In the result, the Letters Patent Appeal is allowed in part. The respondent no.5 is directed to ensure payment of salary to the appellant for the period from 18.11.2000 to 28.02.2004 adjusting the payment, if any, made to the appellant. Order dated 16.04.2009 would accordingly be modified. (Virender Singh, C.J.) (Shree Chandrashekhar, J.) Satyarthi/A.F.R.

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