

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.7196/2016

THE STATE OF JHARKHAND
DEPARTMENT OF HEALTH MEDICINE
EDUCATION AND FAMILY WELFARE THROUGH
THE SECRETARY & ORS.

Appellant(s)

VERSUS

BANARAS PRASAD (DEAD) THROUGH LRS.

Respondent(s)

O R D E R

The respondent was employed as a clerk in the Health Department of the State of Bihar, as it stood then, when he was suspended vide Order dated 15.2.1991 of a Civil Surgeon-cum-CMO, Giridih, Giridih. It appears from the records that the suspension Order could not be served on him as he disappeared from the scene. Nor did he agitated his suspension or the consequential inaction thereafter as no departmental proceedings were held possibly on account of his having disappeared from the scene.

The State of Jharkhand was created out of the

erstwhile State of Bihar under the provisions of Bihar Reorganisation Act, 2000 on 01.11.2000 and the State of Jharkhand vide a notification dated published on 22.10.2001 adopted the Bihar Service Code, 1952 w.e.f. 15.11.2000. It appears that thereafter the case of the respondent came into light and vide Order dated 31.1.2003, the Deputy Secretary, Department of Health & Family Welfare, Government of Jharkhand revoked the suspension order dated 15.2.1991 and posted respondent No. 1 as Clerk under Civil Surgeon, Ranchi and issued direction to the Civil Surgeon, Giridih to frame charges and initiate departmental proceedings against the respondent. On account of absence of vacancy of post, vide order dated 31.5.2003, the respondent was posted on the vacant post of Head Clerk under Civil Surgeon, Koderma and the respondent joined on 04.7.2003.

It is at the aforesaid stage that the respondent started demanding admissible allowances, benefits and promotion for the period 15.2.1991 till 31.3.2003 inter alia on the grounds that no proceedings have been initiated against him during that period and also claims salary for the period June, 2003 to February, 2004 as per the Last Pay Certificate. On account of the appellant not

obliging, Writ Petition (S) No.1097 of 2005 was filed before the High Court of Jharkhand at Ranchi. The learned Single Judge of the High Court allowed the writ petition vide Order 04.9.2012. The order recorded that no departmental proceedings were ever initiated against the petitioner nor he was found guilty for any charge (an aspect undisputedly factually incorrect). After recording submissions, the writ petition was allowed without really recording any reasons other than the fact of absence of departmental proceedings as alleged by the respondent. A review petition was filed by the appellant predicated on a wrong recording of the factum of no departmental proceeding being initiated against the respondent. The review application was, however, dismissed by the Order dated 30.1.2015 merely recording the High Court order recording that factually the absence of departmental proceedings is not correctly noted but only opining that if departmental proceedings had been initiated subsequently they may face their own fate. The respondent assailed the aforesaid orders in LPA No.539 of 2015. This LPA, in the same manner as the Order of the Single Judge was dismissed by a cryptic order dated 09.5.2016 impugned in the present proceedings.

We may note that an aspect of delay has been noted here while referring to the fact that the Registry is not able to count the period of delay. However, the fact remains that the order was passed on 04.9.2012 and the review was filed in 2013 which was dismissed on 30.1.2015. Thus, one does not find the aspect of delay of any significance. The operative portion of the High Court order has been reproduced and after that there is a single sentence of dismissal.

We may note the most crucial aspect i.e. that the departmental proceedings had culminated in an Order dated 13.5.2015 and that aspect is stated to have been placed before the Division Bench. The respondent was not found guilty of committing irregularities in appointment and misbehavior *albeit* on account of the relevant records not being found. However, the charge of unauthorized absence from 04.4.1989 to 14.02.1991 and irregular absence from 15.2.1991 to 31.3.2003 (suspension period) continuously for 13 years was proved and the punishment was imposed as under:-

“(I) Censure

(II) No payment shall be made for the period of unauthorized absence from 04.4.1989 to 1.02.1991 according to the principle of ‘No work no pay’ and this period shall not be taken

into account in service for any purpose.
(III) Period from 15.02.1991 to 31.3.2003 (suspension period) shall be regularized in such a way according to the provision of rule 97(1)(A)(B) of the Service Code that only subsistence allowance shall be payable for the above period."

The aforesaid order has never been assailed by the respondent and the purport of the impugned orders would be to give him the full salary benefits for the complete period of absence, something we cannot countenance.

We were initially a little circumspect in respect of the manner in which the State has handled the case of the respondent where he remained under suspension for a long period of time without any departmental proceeding being initiated and the explanation given by the learned counsel for the State of Jharkhand that most of the period was when the State of Jharkhand had not been carved out did not appeal to us. However, what appeals to us is the fact that after his suspension the respondent appears to have disappeared from the scene and thus cannot be permitted to take advantage of his absence of the suspension order. We did put a question to the learned counsel for the respondent that did he ever report for work after the suspension order or over this period of

time did he ever challenged the same till his suspension was revoked by the State of Jharkhand and there is no answer to the same.

It would be absolutely contrary to a service jurisprudence principle if an employee is able to take advantage of his own absence for this period of time. If his grievance was that departmental proceedings were not being initiated despite suspension, he was required to take redressal of his grievances. He did not do so. On the other hand he conveniently remained absent from the same with a result that even the suspension order could not be served on him. That the State of Bihar also did nothing in the matter is another part of the story!

We thus are of the view that both the impugned judgments cannot be sustained and have to be set aside and the respondent should be entitled to the benefits in terms of the order passed on 13.5.2015 extracted aforesaid.

The aforesaid would logically be subject to any challenge to be laid to the same but its too late now after seven years for the respondent to claim the right to challenge their aspect.

The civil appeal is allowed in the aforesaid terms,
leaving parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[M.M. SUNDRESH]

NEW DELHI,
07th APRIL, 2022.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Date : 07-04-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Mr Arunabh Chowdhury, Sr. Adv.
Ms. Pragya Baghel, Adv.
Ms. Pallavi Langar, AOR

For Respondent(s) Mr. Keshari K. Tiwari, Adv.
Mr. Amish Tiwari, Adv.
Mr. Shivendra V., Adv.
Mr. Sudhir Naagar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is allowed in terms of the signed order.
Pending application(s), if any, stands disposed of.

(RASHMI DHYANI)
COURT MASTER

(POONAM VAID)
COURT MASTER

(signed order is placed on the file)