

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 5737 of 2019
(@ SLP(C) No. 16928/2018)

State of Jharkhand & Anr

Appellant(s)

Versus

Amresh Narayan Sinha

Respondent(s)

JUDGMENT

Dr Dhananjaya Y Chandrachud, J

Leave granted.

This appeal arises from a judgment of a Division Bench of the High Court of Jharkhand dated 12 April 2017. The Division Bench directed the appellant that, upon the revocation of the suspension of the respondent, he should be given full pay and allowances for the period of suspension, though the disciplinary proceedings have not been concluded.

The respondent was engaged, at the material time, as a Veterinary Officer in the service of the State of Bihar. In June 2005, his services were allotted to the State of Jharkhand after the reorganisation of States. Sanction was issued on 17

February 2006 for his prosecution in CBI Case No. RC 5(A) 2005-Pet under Section 120B, 201, 420, 467, 468 and 471 of the Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

The respondent was placed under suspension on 14 March 2012 in contemplation of disciplinary proceedings. On 11 March 2013, he was informed that a decision had been taken to initiate departmental proceedings against him on the charges mentioned in the communication. The High Court passed an order on 28 February 2013 requiring the State of Jharkhand to consider the representation of the respondent for revocation of his suspension. The representation was rejected by the State Government.

On 29 May 2013, the subsistence allowance which was initially paid to the respondent at the rate of 50 per cent was increased to 75 per cent. The departmental proceedings have been held in abeyance pending the criminal trial. The respondent was chargesheeted in the criminal case and cognizance was taken by the competent court. Charges were framed. The trial is stated to be in progress.

On 6 July 2015, the State revoked the suspension of the respondent. Thereupon, a Writ Petition was filed by the respondent before the learned Single Judge. On 18 July 2016 the Single Judge directed the State Government to take a decision with respect to the payment of full salary for the period of suspension irrespective of the pendency of the criminal case. This direction of the learned Single Judge was affirmed by the Division Bench in a Letters Patent Appeal on 12 April 2017. The Division Bench, as well as the learned Single Judge held that, in view of the provisions of Rule 97 of the Jharkhand Service Code, 2001, the respondent would be entitled to full pay and allowances upon the revocation of his

suspension, even if the departmental proceedings were pending against him

Aggrieved by these directions, the State is in appeal.

Rule 97 of the Jharkhand Service Code provides as follows:-

“Rule-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) Whether 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.”

Sub-rule (1) of Rule 97 indicates that where a government servant is suspended, the authority competent to order the reinstatement has to consider and make a specific order regarding the pay and allowances for the period of absence from duty and on whether the period shall be treated as a period spent on duty. Sub-rule (2) indicates that where the authority concludes that the suspension was “wholly unjustified”, the government servant shall be given full pay and allowances as if the order of suspension had not been passed. The High Court misconstrued the provisions of Rule 97 in coming to the conclusion that full pay and allowances must necessarily follow as a consequence of the suspension being revoked. This construction is contrary to the plain terms of Rule 97 as extracted above. The disciplinary proceedings have been held in abeyance pending the conclusion of the criminal trial. It is only after the conclusion of the departmental inquiry that the competent authority will have to decide, in terms of Rule 97, how the period of suspension should be treated and whether it is liable to be treated as a period spent on duty. A decision will be taken on the pay and allowances which should be allowed. The directions which were issued by the High Court at this stage were hence contrary to Rule 97.

The factual position, as it emerges before the Court, is that under the pain of contempt proceedings, the State has already paid over the entire pay and allowances for the period of suspension to the respondent. In view of the above position, we are of the view that the only appropriate direction to issue at this stage would be that the payment which has been made to the respondent shall be subject to the ultimate decision of the competent authority in terms of Rule 97(1) after the conclusion of the disciplinary proceedings.

We accordingly, allow the appeal and set aside the impugned judgment and order of the High Court dated 12 April 2017. There shall be no order as to costs.

Pending application(s), if any, shall stand disposed of.

.....J.
(Dr Dhananjaya Y Chandrachud)

.....J.
(Indira Banerjee)

New Delhi
22 July 2019

ITEM NO.26

COURT NO.10

SECTION XVII

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

Petition(s) for Special Leave to Appeal (C) No(s). 16928/2018

(Arising out of impugned final judgment and order dated 12-04-2017 in LPA No. 556/2016 passed by the High Court Of Jharkhand at Ranchi)

THE STATE OF JHARKHAND & ANR.

Petitioner(s)

VERSUS

AMRESH NARAYAN SINHA

Respondent(s)

Date : 22-07-2019 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s)

Mr. Dilip Kumar Dubey, Adv.
Mr. Jayesh Gaurav, Adv.
Mr. Vishal Arun, AOR

For Respondent(s)

Mr. Gopal Prasad, AOR

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

Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed reportable judgment is placed on the file)