

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

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**W.P.(S) No.605 of 2024**

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Bhavesh Kant Jha .... Petitioner

-- Versus --

- 1.The State of Jharkhand
- 2.The Director, Department of Industries (Handloom, Resham and Sericulture), Jharkhand, Ranchi
- 3.The Assistant Director, Handloom Industries (Resham and Sericulture) Department, Dumka
- 4.The General Manager, District Industries Centre, Sahibganj
- 5.The Project Officer, Dhaumkha Para, Prasasmi Bhawan, Nuria, Maheshpur, Pakur .... Opposite Parties

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner :- Mr. Jai Prakash Jha, Senior Advocate  
 For the State :- Mr. Suraj Prakash, Advocate

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**4/15.03.2024** Heard Mr. Jai Prakash Jha, the learned Senior counsel appearing on behalf of the petitioner and Mr. Suraj Prakash, the learned counsel appearing on behalf of the respondent State.

2. The present petition is filed praying therein for quashing of the order of the Director, Department of Industries (Handloom, Resham and Sericulture) Dated 12.11.2020 by which the claim of the petitioner with regard to payment of salary with effect from 01.04.1998 till 12.04.2017 has been denied.

3. Mr. Jai Prakash Jha, the learned Senior counsel appearing on behalf of the petitioner submits that the petitioner was appointed under the respondents as clerk-cum-cashier under the pilot project centre Maheshpur Raj, Pakur on 27.10.1984 and his services was confirmed and he was also granted time bound promotion. According to him, the controversy crept in

the department with regard to the appointment of the petitioner along with other persons namely Subhash Chandra Yadav and Shailendra Kumar in the year 1998 and the Director, Industries, State of Bihar, had asked not to make payment of salary to the petitioner and Subhash Chandra Yadav and Shailendra Kumar. He also submits that the State of Bihar also issued a show cause to the petitioner as to why the service of the petitioner should not be terminated and the service of the petitioner was terminated by order dated 12.12.2007 under the signature of respondent no.2. He further submits that the said termination was challenged by the petitioner in W.P.(S) No.4177 of 2008 before this Court and by the judgment dated 18.04.2016 the said termination of the petitioner was set aside and the matter was remanded back to the competent authority to pass a fresh order as the case of the petitioner was covered by the judgment of the Hon'ble Patna High Court in *C.W.J.C. No.12320 of 2004*. Mr. Jha, the learned Senior counsel appearing for the petitioner submits that pursuant to that the respondent no.2 by order dated 24.03.2017 directed and stated that the case of the present petitioner stands exactly on the same footing in comparison to Shailendra Kumar who has already been reinstated in service with all consequential benefits. The case of the present petitioner cannot be differentiated at all and therefore he has opined that the petitioner is entitled for the same benefit and relief as of Shailendra Kumar who has already been awarded in view of the order of the Hon'ble Patna High Court and in the Hon'ble Patna High Court order, the direction is also there that Shailendra Kumar will be entitled for salary. Mr. Jha, the learned Senior counsel submits that however by the impugned order dated 12.11.2020 a new order has been passed by which it has been stated that the petitioner is not entitled for the salary with effect from 01.04.1998 to 12.04.2017 as he has not worked during that period. He submits that the order is arbitrary. He further submits that the predecessor of the author of annexure-1 has already taken decision in favour of the petitioner, however, by the impugned order the successor to him has passed the present order

after lapse of more than three years and in view of that the impugned order is bad in law.

4. The learned counsel for the respondent State submits that counter affidavit has been filed and it has been disclosed therein that for the said period the petitioner had not worked and therefore the salary for that period was not paid however the entire retiral benefits has already been paid.

5. It is admitted position that the petitioner was appointed under the respondents as clerk-cum-cashier under the pilot project centre Maheshpur Raj, Pakur on 27.10.1984 and his services was confirmed and by the earlier order and the services of the petitioner was terminated and the said order was challenged before this Court in W.P.(S) No.4177 of 2008 which was allowed by the order dated 18.04.2016 and the matter was remanded back to the competent authority to pass a fresh order and pursuant to that, the Director, Handloom, Sericulture and Handicraft, Government of Jharkhand, has taken a decision by the order dated 24.03.2017 contained in annexure-3 holding that the case of the petitioner is identical to one Shailendra Kumar and he is also entitled for the same benefits and after three years the present impugned order i.e. 12.11.2020 has been passed by which the salary for the period 01.04.1998 till 12.04.2017 has been denied on the ground that for that period the petitioner had not worked. Further once the dismissal order was set aside and the decision was already there in favour of the petitioner, there is no reason why the salary for the period from 01.04.1998 till 12.04.2017 will not be provided to the petitioner. There is no doubt that the petitioner has not worked for certain period from 01.04.1998 till 12.04.2017 and the principle of 'no work no pay' will apply in the facts and circumstances of each case, but there are parameters of passing such orders. If the Court comes to the conclusion that there is illegality on behalf of the authority concerned, and the petitioner was not allowed to work, the Court is required to quash the order and pass appropriate order. In the case in hand, it has already been held by this Court that by the impugned order by which

the petitioner was terminated, was not found to be legal, and it was quashed and the predecessor of the present respondent no.2 has also taken a decision in favour of the petitioner, however, after three years, the present order has been passed. Thus, for the wrong of the respondent State, the petitioner was prevented to work and if such a situation is there, the case of the petitioner is covered in light of the judgment of the Hon'ble Supreme Court in the case of **Pradeep, son of Raj Kumar Jain v. Manganese Ore (India) Limited, (2022) 3 SCC 683** in which it has been held that the question arises as to whether the back wages is to be given and as to what would be the extent of back wages and these are the aspects which depends on the facts of the case as noted in the case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others, (2013) 10 SCC 324**. Thus, it is well settled that in the case where it is found that the employee is not at all at fault and yet he was visited with illegal termination which is actually a device by malice which may be unfair to deny him the fruits of employment which would have enjoyed, but for mala-fide termination, he was not allowed. In view of above facts and considering the law on the issue in question, the petitioner is entitled for salary with effect from 01.04.1998 till 12.04.2017.

6. Further the impugned order is passed on the strength of Rule 58 and Rule 59 of Jharkhand Service Code. Rule 58 and 59 of Jharkhand Service Code and Rule 74 of the Bihar Financial Rules do not make complete bar of retrospective promotion, nor debar payment of arrears of salary on such retrospective promotion will be evident from Rule 74 of the Bihar Financial Rules where the authorities are competent to sanction benefit from retrospective effect. A reference in this regard may be made to the judgment rendered by the Hon'ble Patna High Court in the case of **Sri Mahavir Pandey v. The State of Bihar & Ors.**, reported in **1999 SCC OnLine Pat 899**. Paragraphs 10 and 11 of the said judgment are quoted herein below:

“10. So, far as Rule 58 of the Bihar Service Code is

concerned, it is to be read alongwith other relevant rules, namely, Rule 74 of Bihar Financial Rules and other guidelines/rules issued by the State from time to time.

11. Sub-rule (b) to rule 58 relates to a direct recruitment in overseas, which is not applicable in the present case whereas sub-rule (a) of rule 58 relates to draw of pay and allowance attached to tenure of a post of incumbent which starts from the date the person assume the duties, subject to exception specifically made in the rule. The same do not make complete bar of retrospective promotion, nor debar payment of arrears of salary on such retrospective promotion will be evident from Rule 74 of the Bihar Financial Rules where the authorities are competent to sanction benefit from retrospective effect, but in exceptional circumstances and in other cases with the special approval of the Government.”

Moreover, Rule 58 of Jharkhand Service Code and Rule 74 of the Financial Rules of the Government of Jharkhand have been considered by the Division Bench of Patna High Court in the case of '**Dr. Paras Nath Prasad v. State of Bihar**' and the co-ordinate Bench of this Court in the case of '**Suryadeo Prasad v. State of Jharkhand**'. The petitioner termination order is already quashed and predecessor of the authority concerned has opined that petitioner is entitled for arrears.

7. In view of that, impugned order dated 12.11.2020 is quashed.
8. The respondents are directed to release salary of the petitioner with effect from 01.04.1998 till 12.04.2017 within six weeks.
9. W.P.(S) No.605 of 2024 stands disposed of.
10. Pending petition, if any, also stands disposed of accordingly.

**( Sanjay Kumar Dwivedi, J.)**

SI/ **A.F.R**