

IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No.273 of 2024

1. State of Jharkhand through Secretary, Home Department, Government of Jharkhand, Project Building, P.O. and P.S. Dhurwa, District,-Ranchi.
2. Director General and Inspector General of Police, Jharkhand, having his office at Forest Officer's Colony, Doranda, P.O. and P.S. Doranda, District- Ranchi.
3. Deputy General of Police, Singhbhum (Kolhan) Area, Chaibasa, P.O. & P.S. Chaibasa, District:-West Singhbhum.
4. Superintendent of Police, West Singhbhum, P.O. and P.S.- Chaibasa, District:- West Singhbhum.
5. Sub-Divisional Police Officer, Kiriburu, P.O. and P.S.- Kiriburu, District West Singhbhum.

... .. **Appellants**

Versus

Tribhuwan Prasad Singh (Rtd. Sub Inspector), s/o Late Rameshwar Prasad Singh, r/o Singhara, P.O., P.S. Mahua, Dist. Vaishali (Bihar), presently r/o Baijnathpur, Near Dodhkathi, Dumka Road, P.O., P.S. Deoghar, Dist. Deoghar

... .. **Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE RAJESH KUMAR

For the appellants : Mr. Ashutosh Anand, A.A.G.-III
 For the Respondent : Ms. Khalida Haya Rashmi, Advocate
 : Mr. Ayush Kumar, Advocate

Order No. 11/Dated 29th October, 2025

Per Sujit Narayan Prasad, J.

1. The instant intra-court appeal is under Clause 10 of the Letters Patent directed against the order/judgment dated 08.12.2023 passed in W.P.(S) No.835 of 2019 whereby and whereunder the writ petition has been allowed by quashing the impugned orders holding the petitioner entitled for consequential benefits for the period during which he has not worked due to illegal termination.

Factual Matrix

2. The brief facts of the case as per the pleading made in the writ petition, which are required to be enumerated, read as under :-

Petitioner was appointed as Assistant Sub Inspector on 11.03.1978. Thereafter upon cadre reorganization petitioner was promoted to the post of Sub Inspector on 04.09.1989.

Petitioner was granted the benefit of second A.C.P. on 03.04.2003 and was granted the pay scale of 6500-200-10500. Thereafter salary of petitioner was revised in view of VIth Pay Commission and he was posted in pay scale of 9300-34,500 with Grade Pay of Rs. 4600 on 01.01.2006. Further he has already retired from his service on 29.02.2016 from the post of sub inspector.

On 31.03.2004, when the petitioner was posted in Bada Jamda Police Station for election duty, at about 2:00 P.M., extremists attacked at the O.P. and snatched 9 rifles, cartridges and one service revolver. Upon enquiry it was alleged that officials and constables including this petitioner, present at the place of occurrence, fled away in order to save their lives and did not protest the attack of extremists.

For the said act charges were framed against the petitioner that he was guilty of indiscipline, serious negligence of duty and not showing braveness befitting a

police officer and he was put under suspension and was asked to submit reply to the show cause, to which he replied but was not considered and departmental proceedings continued further and enquiry officer found him guilty of the charges.

Upon the findings of the enquiry officer that the petitioner failed to show his bravery and qualities of a competent police officer, the Superintendent of police recommended dismissal from service and petitioner was asked to submit reply to show cause and accordingly it was filed on 16.05.2007. However, on the basis of the recommendation of the Superintendent of Police, the DIG Kolhan Range affirmed the enquiry report and passed an order of dismissal vide order dated 28.01.2008.

Petitioner preferred an appeal against the final order dated 28.01.2008 passed in the departmental proceeding before the Director General of Police.

During the pendency of the said appeal, petitioner moved before this Hon'ble court by filing writ petition being W.P.(S) No. 2341 of 2008, which was disposed of directing the appellate authority to pass an appropriate final order preferably within a period of three months.

The Appellate Authority vide order dated 15.01.2009 dismissed the appeal and affirmed the order of dismissal passed by the disciplinary authority recording that no

evidence has been brought on behalf of the petitioner which demonstrates his innocence.

The petitioner again preferred writ petition being W.P.(S) No. 1100 of 2009 challenging the order passed by the Appellate Authority upon multifarious grounds and ultimately on 01.02.2016, order of dismissal from service dated 28.01.2008 and order passed by the appellate authority dated 13.01.2009/15.01.2009 were quashed and matter was remitted back to the disciplinary authority with a direction to pass appropriate order on quantum of punishment/delinquency proved against the petitioner within two months in accordance with law.

In compliance of the order of remand passed by this Court, respondent no.-2 before the writ court passed a fresh order dated 19.08.2016 whereby quantum of punishment passed against Shankar Thakur (co-employee) has been extended to the petitioner without any modification. Accordingly, petitioner was posted in his basic pay and his increment was stopped for five years without any impact on future pay scale.

Moreover, for the suspension period petitioner will not be entitled to any other payment except subsistence allowance. Further for the period in between his dismissal and joining no salary will be paid to him on grounds of No

Work No Pay and this period will be adjusted in the Earned Leave.

In light of the order passed by Director General and Inspector General on 19.08.2016, an order was passed by the Superintendent of Police, West Singhbhum, Chaibasa whereunder the punishment imposed upon the petitioner vide order dated 19.08.2016 was accepted. Further, vide memo no. 2175, 2358 and 1908 dated 26.08.2016, 18.09.2016 and 03.11.2016 respectively, a correction was introduced in the order passed by S.P., West Singhbhum.

The petitioner had completed thirty years in service while he was still in service i.e., in March 2008, however till date i.e, even after retirement, benefits of third MACP has not been granted to the petitioner.

Since earlier order of dismissal has been set aside by this Hon'ble court in W.P.(S) No. 1100 of 2009 petitioner is entitled to grant of third M.A.C.P. which is consequential benefits of his service.

Petitioner had already approached respondent no. 3 before the writ court and has also filed representation for consideration of his case concerning the grant of M.A.C.P. benefits, however till date no constructive steps has been taken by the concerned respondents in this regard.

The petitioner, being aggrieved with the order dated 19.08.2016 passed by Respondent No.2, preferred writ petition being W.P.(S) No.835 of 2019.

The respondent-State has appeared and filed counter affidavit.

The learned Single Judge, after hearing the parties, has allowed the writ petition by quashing the impugned orders holding the petitioner entitled for consequential benefits for the period during which he has not worked due to illegal termination.

Being aggrieved with the order passed by the learned Single Judge, the State has preferred the instant appeal.

3. It is evident from the factual aspect that the writ petitioner while in service was proceeded departmentally for indiscipline, serious negligence of duty and not showing braveness befitting a police officer as per the memorandum of charge issued against him.

4. The said departmental proceeding has culminated into the judgment of punishment of dismissal from service vide order dated 28.01.2008 against which the appeal has been preferred which has also been dismissed vide order dated 13.01.2009/15.01.2009.

5. The State has acted upon on the basis of the said order and applying the principle of parity, the punishment already inflicted upon one co-employee against whom the

punishment of reducing of pay scale of five stages has been inflicted.

6. The learned Single Judge of this Court, vide order dated 01.02.2016 passed in W.P.(S) No.1100 of 2009, has quashed the said order and remitted the matter before the disciplinary authority to impose punishment afresh by applying the principle of parity.

7. The competent authority has come out with the fresh order on 19.08.2016 by which the pay scale of the writ petitioner has been reduced for five years by reverting the writ petitioner to the basic pay scale with a further direction that during the period of dismissal the writ petitioner will only be entitled for the subsistence allowance and no arrears of difference of salary will be disbursed in his favour.

8. Being aggrieved with the part of the order whereby and whereunder the consequential benefits, i.e., the grant of 3rd M.A.C.P and the back wages for the period during which the writ petitioner was kept out of service due to the consequence of dismissal, has been denied, the writ petitioner has filed writ petition being W.P.(S) No.835 of 2019.

9. Learned Single Judge has passed an order holding the petitioner entitled for the consequential benefits for the period of dismissal along with the direction for consideration of the upgradation in the pay scale under the Modified

Career Progression Scheme, the 3rd M.A.C.P., as was admitted in para-8 of the counter affidavit.

10. The State, being aggrieved with the said order, has preferred the appeal.

Submission of the learned counsel for appellant-State

11. Mr. Ashutosh Anand, learned counsel appearing for the State-appellant, has taken the following grounds in assailing the impugned judgment :-

- (i) The learned Single Judge has failed to appreciate that the petitioner has rightly not been held entitled for the back wages since the petitioner has not performed the duty for the said period and as such, the principle of 'no work no pay' has been made applicable which according to the learned State counsel cannot be said to suffer from an error due to the simple reason that the petitioner has not performed his duty during the said period and as such, it cannot be claimed as a matter of right.
- (ii) The ground has been taken in assailing the impugned judgment that once the writ petitioner has not challenged the order passed by the learned Single Judge dated 01.02.2016 passed in W.P.(S) No.1100 of 2009 whereby and whereunder this Court has passed an order directing the competent authority of the State Government to inflict the punishment by following the

principle of parity, the writ petitioner cannot assail the said order if the State has followed the said direction passed by this Court since the State has inflicted the punishment exactly same as has been inflicted upon one Shankar Thakur, Sub-Inspector of Police.

- (iii) The ground has also been taken, as has been referred in grounds (E) that the moment the petitioner has retired from service, then automatically, in view of the provision of Rule 43(b) of the Jharkhand Pension Rules, 2000, the pending proceeding has been deemed to be converted in view of the judgment passed by the Patna High Court in the case of ***Shambhu Saran v. the State of Bihar & Others [1991 SCC OnLine Pat 341]***.

12. Learned State counsel, based upon these grounds has assailed the impugned judgment and the argument has been advanced that the learned Single Judge has failed to appreciate these grounds while passing the impugned judgment and as such, the impugned judgment needs interference.

Submission of the learned counsel appearing for the respondent-writ petitioner

13. Per contra, learned counsel appearing for the respondent-writ petitioner, has taken following grounds in defending the impugned judgment:-

- (i) It has been contended that although the principle of parity has been said to be followed as per the argument advanced on behalf of the learned State counsel but the same cannot be said to be a just and appropriate order since the day when the impugned order of punishment was passed, the petitioner was not in service.
- (ii) It has been contended that the only course available with the State appellant was to pass the punishment order only on the basis of the punishment as referred in the Jharkhand Pension Rules, 2000.
- (iii) It has been contended that although in ground (E) it has been referred that the Jharkhand Pension Rules, 2000 which contains the provision of Rule 43(b) has been followed in view of deemed conversion of the departmental proceeding initiated under the Civil Services (Classification, Control and Appeal) Rules. But, if the punishment which has been inflicted upon the writ petitioner which is lowering down the pay scale for five years reverting the writ petitioner to the basic pay scale, cannot be said to be in terms of the punishment as referred in the Jharkhand Pension Rules, specifically in Rule 43(b).
- (iv) Learned counsel has submitted that since the writ petitioner was already retired from service on 29.02.2016, but the punishment has been inflicted on

19.08.2016, the day when the writ petitioner was not in service, hence, there cannot be any punishment deeming the writ petitioner in service, as provided under the list of punishment under Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016 as contained under Rule 14 thereof.

- (v) Learned counsel has further submitted that so far as the question which has been answered by the learned Single Judge by holding the writ petitioner entitled for the consequential benefits for the period of dismissal, cannot be said to be unjustified, reason being that once the State has admitted the order passed by the learned Single Judge quashing the order of punishment of dismissal from service, which itself clarifies that the State has admitted the fact that there ought not to have punishment of dismissal and once the order of dismissal has been said to be not applicable by applying the principle of parity which means that the writ petitioner was forcefully not allowed to discharge his duty and in such circumstances, the principle of 'no work no pay' will not be applicable.

14. Learned counsel appearing for the respondent-writ petitioner, based upon the aforesaid grounds, has submitted that the order passed by the learned Single Judge, therefore,

suffers from no error and, as such, the present appeal is fit to be dismissed.

Analysis

15. We have heard learned counsel for the parties, gone through the finding recorded by the learned Single Judge in the impugned judgment as also the fact as available in the memo of appeal as has been incorporated from the pleading made in the writ petition and the counter affidavit.

16. The question which requires consideration as per the finding recorded by the learned Single Judge in the impugned judgment as to whether the writ petitioner is entitled for the consequential benefits for the period of dismissal, after the order of dismissal having been quashed and set aside by remitting the matter before the disciplinary authority for passing order afresh by applying the principle of parity.

17. The second issue although the same has not been referred in the order passed by the learned Single Judge but as has been argued before this Court and, as such, it is the bounden duty of this Court to also consider the same by framing a separate issue which is based upon the ground as referred in Ground (E) - as to whether the ground which has been taken of deemed conversion of the departmental proceeding initiated against the writ petitioner after the order of dismissal having been quashed and set aside by this Court

vide order dated 01.02.2016 passed in W.P.(S) No.1100 of 2009, will it be said deemed to be converted under the provision of Rule 43(b) of the Jharkhand Pension Rules in terms of the order passed by the Patna High Court in the case of ***Shambhu Saran v. the State of Bihar & Others*** (Supra) if the punishment has not been inflicted in terms of the punishment as enshrined in the Jharkhand Pension Rules.

18. This Court needs to refer herein that the second issue although has not been argued before the learned Single Judge but we are of the view that the Letters Patent Appeal Court since is in furtherance of the original proceeding and in exercise of power conferred under Article 226 of the Constitution of India, the issue if has been raised, it requires to be considered. Further, the said argument being the pure question of law and as such, if it will not be considered, this Court will fail in its duty.

19. Therefore, this Court thought it proper also to consider the said issue by framing it as a separate issue being Issue No.(ii).

Issue No.(i)

20. The Issue No.(i) pertains to entitlement of the writ petitioner of the back wages for the period during which he was dismissed from service.

21. The factual aspect since has already been enumerated hereinabove, but at the risk of repetition the same is again being referred herein, i.e., the writ petitioner although was dismissed from service vide order dated 28.01.2008 upheld by the appellate authority vide order dated 13.01.2009/15.01.2009. But the said order of dismissal has been quashed and set aside by this Court vide order dated 01.02.2016 passed in W.P.(S) No.1100 of 2009 on the principle of parity since the co-employee against whom separate departmental proceeding has been initiated on the same charge, has been inflicted with the punishment of reverting the said employee to the basic pay scale for five years.

22. The admitted fact is that the State has acted upon on the basis of the order passed by this Court on 01.02.2016 passed in W.P.(S) No.1100 of 2009 since a separate order was passed of reverting the writ petitioner to the basic pay scale for five years by following the principle of parity and making it at par with the punishment already imposed against one Shankar Thakur, the co-employee against whom the departmental proceeding was initiated for the same charge.

23. The law is well settled that 'no work no pay' is the normal rule, but, that depends upon the situation, i.e., if the concerned employee has forcefully been not allowed to

discharge his duty, then the principle of 'no work no pay' will not be applicable. However, if the writ petitioner, on his own, has not discharged his duty, then certainly the principle of 'no work no pay' will be applicable. The same can be taken into consideration from the judgment rendered by Hon'ble Apex Court in the case of ***Union of India and Others Vs. K.V. Jankiraman & Ors., (1991) 4 SCC 109***, wherein while dealing with the concept of 'no work no pay' as under paragraph 25 thereof it has been held by Hon'ble Apex Court that 'no work no pay' although is the normal rule but it cannot be applied uniformly, rather, it is to be made applicable depending upon the facts and circumstances, i.e., if the employee is willing to discharge his duty but he has forcefully been not allowed to discharge his duty, then the principle of 'no work no pay' will not be applicable. Vice-versa thereof would be that if the employer has allowed the concerned employee to discharge his duty but if the employee willingly has not discharged his duty then certainly the principle of 'no work no pay' will be applicable, reference in this regard be made to paragraph 25 of the aforesaid judgment, which reads as under:-

“25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where

the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.”

24. The same situation has been dealt with by Hon'ble Apex Court in the case of ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others*** reported in **(2013) 10 SCC 324**, wherein the following propositions have been laid down at paragraph 38 which is being quoted herein:-

38.1. *In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*

38.2. *The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*

38.3. *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically*

plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. *The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.*

38.5. *The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.*

38.6. *In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to*

grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80] .

38.7. *The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80] , [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”*

25. This Court, while dealing with the said situation as to whether the ‘no work no pay’ will always be applicable, has considered the said issue in appeal being L.P.A. No.80 of 2020 dated 10.01.2022 wherein it has been held that the principle of ‘no work no pay’ will not be applicable in a case where the concerned employee has been forcefully not allowed to discharged his duty, the relevant paragraph of the said judgment is being referred herein :-

“17. So far as the fact of the given case is concerned, the question which requires to be considered, as to whether the writ petitioner is not entitled to get the arrears of salary for

the intervening period i.e., from 25.08.2001 to 12.01.2009 by making the principle of “no work no pay” applicable?

18. Admittedly, the writ petitioner was appointed as Constable but at the time of physical examination, his height was measured to be 169.5 cm. Subsequently, his height was re-measured to be 167.5 cm. The advertisement contains a condition about minimum eligibility criteria, so far as the height of one or the other candidate is concerned, to be 165 cm.

The respondent authority, although, has dismissed the writ petitioner from service vide order dated 25.08.2001 but the said order has been quashed by the Coordinate learned Single Judge of this Court while allowing the writ petition being W.P.(S) No.1659 of 2003.

The respondent authorities have reinstated the writ petitioner in service vide order dated 12.01.2009 as would appear from Annexure-6 to the writ petition as also given the benefit of additional increment.

The order dated 05.12.2008 passed in W.P.(S) No.1659 of 2003 has never been questioned by the State respondent rather, it has been acted by reinstating the writ petitioner in service, therefore, according to our considered view, once the order of dismissal dated 25.08.2001 having been found to be unjust and improper which led the Coordinate learned Single Judge while allowing the writ petition being W.P.(S) No.1659 of 2003 to be not sustainable, accordingly, quashed and set aside, meaning thereby, the order in entirety has been quashed and set aside and by virtue of that, the writ petitioner is also entitled for the salary for the period of suspension, since the impugned order of dismissal dated 25.08.2001 also contains the decision of denial of salary for suspension period.

Further, the issue of disbursement of salary from the date of dismissal to reinstatement is concerned, according to our considered view, the writ petitioner will be entitled for salary for the following reasons:-

(i) Once the order of dismissal has been quashed and set aside by the learned Single Judge while allowing the writ petition being W.P.(S) No.1659 of 2003 which itself suggests

that there is no ingredients of fraud committed by the writ petitioner, which was accepted by the State respondent, to further corroborate this fact:-

Therefore, we are not hesitate in holding that the writ petitioner was forcefully deprived from discharging his duty which subsequently has been found to be correct by this Court while passing the order in W.P.(S) No.1659 of 2003.

(ii) Further, the writ petitioner is pursuing his litigation before this Court right from the date of his termination and as such, it cannot be said that the writ petitioner was not willing to discharge his duty, observation is being made, on the basis of the fact that once the litigant is contesting the case for reinstatement in service by quashing the order of dismissal, it cannot be said that he was not interested to discharge his duty.

Therefore, the principle of “no work no pay” as has been pleaded by the learned counsel appearing for the State appellant, is not applicable in the facts of the given case.

This Court, after considering the judgment rendered in the case of Union of India and Ors. Vrs. K.V. Jankiraman & Ors., (supra), wherein, it has been laid down that the principle of “no work no pay” will not automatically be applicable, rather it will not be applicable in the fact where the concerned employee is willing to discharge his duty but deprived forcefully by the end of the respondent, is of the view that herein, also the writ petitioner was forcefully deprived from discharging his duty and the moment he has been reinstated in service, he was discharging his duty. Further, he has also given the benefit of additional increment from the date of termination till the date of reinstatement.

(iii) The question of “no work no pay” will also not be applicable because once the State authority has taken decision of granting additional increment as would appear from Annexure-6 dated 12.01.2009 appended to the writ petition, the denial of salary for the aforesaid period cannot be said to be justified.”

26. The State, being aggrieved with the said judgment has approached to the Hon'ble Apex Court by filing Special Leave Petition being S.L.P.(C) No.16868 of 2022 which has been dismissed vide order dated 10.10.2022.

27. Adverting to the factual aspect in order to assess as to whether it is the writ petitioner who himself has not discharged the duty or he has forcefully been not allowed to discharge his duty, for the purpose of considering the ratio as has been laid down by the Hon'ble Apex Court in the case of ***Union of India and Others Vs. K.V. Jankiraman & Ors.*** (Supra) or ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others*** (Supra) or the order passed in L.P.A. No.80 of 2020.

28. Herein, the State authority has imposed the punishment of dismissal from service. The writ petitioner being aggrieved with the same has questioned the same on the principle of parity since co-employee who has also departmentally been proceeded for the same charge has been inflicted with the punishment of reverting the said employee to the basic pay scale for five years.

29. The learned Single Judge of this Court, vide order dated 01.02.2016 passed in W.P.(S) No.1100 of 2009, has quashed the order of punishment and remitted the matter before the authority for passing order afresh by applying the principle of parity, for ready reference, the relevant

paragraph of the said judgment passed by this Court dated 01.02.2016 in W.P.(S) No.1100 of 2009 is being referred herein :-

“10. As a cumulative effect of the facts, reasons, judicial pronouncements and as a logical sequitur to the reasons stated in the forgoing paragraphs, the impugned order or dismissal from services and the order passed by the appellate authority dated 13.01.2009/15.01.2009 confirming the order of the disciplinary authority, being not legally sustainable, are hereby quashed and the matter is remitted back to the disciplinary authority with a direction to pass appropriate order on the quantum of punishment/delinquency proved against the petitioner, keeping in view the parity between the co-delinquents within a period of two months from the date of receipt/production of copy of this order, in accordance with law.”

30. The State has acted upon on the basis of the said order and inflicted the same punishment, i.e., reverting the writ petitioner to the basic pay scale for five years.

31. Now the question arises that when the State has admitted that the principle of parity which ought to have been made applicable has not applied, rather, the same has only been applied once this Court has opined regarding applicability of the principle of parity based upon the judgment rendered by Hon'ble Apex Court in the case of ***Rajendra Yadav v. State of Madhya Pradesh and Others* [(2013) 3 SCC 73]** which itself suggests and clarifies that the writ petitioner although was willing to discharge his duty,

since, if the same punishment would have been inflicted upon the writ petitioner as was inflicted against the said Shankar Thakur, then certainly the writ petitioner would have discharged his duty but it is due to the wrong decision taken by the authority dismissing the writ petitioner from service, he was forced to not discharge his duty and in such circumstances, in our considered view, it cannot be said that the writ petitioner on his own has not discharged his duty, rather, it is the State authority who has forced the writ petitioner not to discharge his duty. Therefore, the principle of 'no work no pay' will not be applicable.

32. The learned Single Judge, while applying the said principle, if has come to conclusion that the consequential benefit is required to be paid in favour of the writ petitioner, which according to our considered view, cannot be said to suffer from an error.

33. Accordingly, the Issue No.(i) is answered in favour of the respondent-writ petitioner and against the State appellants.

Issur No.(ii)

34. So far as this issue is concerned, although the State has taken additional ground as under Ground (E) that the deemed conversion principle has been applied in terms of the judgment passed by the Patna High Court in the case of ***Shambhu Saran v. the State of Bihar & Others*** (Supra)

and thereby the punishment inflicted upon the writ petitioner will be deemed to be converted under the provision of Rule 43(b) of the Jharkhand Pension Rules, 2000.

35. But, the said ground could have been said to be justified if the order of punishment would have been passed in terms of the provision of Rule 43(b) of the Jharkhand Pension Rules, 2000.

36. Herein, the writ petitioner admittedly was superannuated from service on attaining the age of superannuation on 29.02.2016. The order of punishment was passed on 19.08.2016, i.e., six months after retirement from service, that too by inflicting the punishment of reverting the writ petitioner to the basic pay scale for five years.

37. Although, the said punishment of reverting back to the basic pay scale for five year is not available in the list of punishment as provided under Rule 14 of the Jharkhand Government Servants (Classification, Control and Appeal) Rules, 2016, which is being referred herein :-

“Rule 14.

14. Minor and Major Penalties :- The following penalties may, for good and sufficient reasons and as here in after provided, be imposed on a Government Servant, namely -

Minor Penalties :-

- i) Censure;
- ii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

iii) Reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.

iv) Withholding of increments of pay without cumulative effect and not adversely affecting his pension or withholding confirmation in service.

Major Penalties -

v) Withholding of promotion.

vi) Withholding of increments of pay with cumulative effect.

vii) Save as provided for in clause (iii) reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government Servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay.

viii) Reduction to lower time scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government Servant during such specified period to the time scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period –

a) The period of reduction to time scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

b) The Government Servant shall regain his seniority in the higher time scale of pay, grade, post or service.

ix) Compulsory retirement,

x) Removal from service which shall not be a disqualification for future employment under the Government;

xi) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Provided that, in every case in which the charge of possession of assets disproportionate to known source of

income or charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (x) or clause (xi) shall be imposed.

Provided further that in any exceptional case and for special reasons to be recorded in writing, any other penalty may be imposed.”

38. The law is well settled that if the punishment is not enshrined in the list of punishment and even if it is being imposed, the same is considered to be without authority or without jurisdiction and on that ground alone the order of punishment is fit to be quashed and set aside.

39. This Court is not giving specific finding on that ground, since, the respondent-writ petitioner is not before this Court, rather, it is the State who is before this Court by challenging the impugned order wherein the ground has been taken of deemed conversion of the proceeding.

40. The question is that if the punishment is not in terms of the provision of Rule 43(b) of the Jharkhand Pension Rules, 2000 then where is question of deemed conversion. If the punishment would have been under the provision of Rule 43(b) of the Jharkhand Pension Rules, 2000, i.e., withholding whole or part of the pension, and if in such circumstances the challenge would have been by the respondent-writ petitioner that there cannot be any deemed conversion of the departmental proceeding under Rule 43(b) of the Jharkhand Pension Rules, 2000, then this ground as

taken under Ground (E) would have been said to be proper ground but when the State itself has chosen not to inflict punishment as under the provision of Rule 43(b) of the Jharkhand Pension Rules, 2000, then where is the question of deemed conversion under the provision of Rule 43(b).

41. Rule 43(b) only enshrines the punishment of withholding whole or part of pension having no reference of any punishment of reverting one or the other employee to the basic pay scale which can be seen from the provision of Rule 43(b) of the Jharkhand Pension Rules, 2000 which is being referred herein:-

“43(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that-

(a) Such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during

reemployment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation – For the purposes of the rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court.”

42. This Court, in view of the aforesaid fact, is of the view that it is not a case where the principle of deemed conversion of the proceeding initiated under CCS Rules under the provision of Rule 43(b) of the Jharkhand Pension Rules, 2000, rather, it is a case where the State has chosen to pass an order reverting the writ petitioner to the basic pay scale for five years which itself means that the State has inflicted the punishment presuming the said punishment to be within the list of punishment as available under the Civil Services (Classification, Control and Appeal) Rules, as applicable.

43. Therefore, even on the basis of the ground as referred in Ground (E) in the memo of appeal, the State has got no case.

44. Accordingly, the Issue No.(ii) is also answered against the State appellant.

45. Having answered both the issues, this Court is of the view that the order passed by the learned Single Judge needs no interference.

46. In the result, the appeal stands dismissed.

47. Pending interlocutory applications, if any, also stand disposed of.

(Sujit Narayan Prasad, J.)

(Rajesh Kumar, J.)

Date : 29.10.2025

Birendra/**A.F.R.**

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