2026:JHHC:18251

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 2225 of 2024

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Amresh Kumar Jha, son of Maheshwar Jha, aged about 50-year, resident of Block- Colony, Qr. No.2, B-Type, Garhwa, P.O. & P.S.- Garhwa, District- Garhwa (Jharkhand) **..... Petitioner (s)**

Versus

1. State of Jharkhand through the Secretary, Road Construction Department, having its office, Project Building, Dhurwa, P.O. & P.S- Dhurwa, District- Ranchi
2. Joint Secretary, Road Construction Department, having its office, Project Building, Dhurwa, P.O. & P.S- Dhurwa, District- Ranchi (Jharkhand)

..... Respondent(s)

.....

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

.....

For the Petitioner(s) : Mr. Saurabh Shekhar, Adv
For the Respondent : Mr. Ratnesh Kumar, S.C. (L&C)-I

C.A.V. ON: 30/04/2026 **PRONOUNCED ON:22/06/2026**

1. Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioner for the following reliefs;

(i)For issuance of appropriate writ(s), order(s), direction(s), specifically a writ in the nature of certiorari for quashing of limited portion of order as contained in Memo No.05/मुक.-03 23/2017, पथ 5349(S), dated 24.11.2023 (Annexure-5), issued under the signature of respondent no.2 challenge limited to the extent whereby, the respondent has taken decision at Para-8(iii) with the services of the petitioner for the period of his termination extending between 13.11.2017 to 24.11.2023, will be treated as period of no work no pay, by applying provisions under Rule 97(i) (क) and (ख) read with rule 180 of the service code;

(ii) For issuance of appropriate writ(s), order(s), direction(s), specifically a writ in the nature of mandamus commanding upon the respondents to release the entire arrears of salary extending between the period of 13.11.2017 24.11.2023, the period for which the petitioner was kept under termination, which was set-aside by the Hon'ble High Court and

thereafter, the petitioner has been reinstated in service in pursuance to the order dated 24.11.2023, at its paragraph 8(ii);

(iii) For issuance of appropriate writ(s), order(s), direction(s), specifically a writ in the nature of mandamus commanding upon the respondents to release all the consequential benefits including increment and continuity of services (for all purposes) for the period when the petitioner has remained out of service, i.e. extending between 13.11.2017 and 24.11.2023;

And/Or

(iv) For the issuance of any other appropriate writ(s) /order(s) / direction(s) for doing conscionable justice to the petitioner.

3. The brief facts of the case are that the petitioner initially worked as a Daily Wage Employee from 1996 in the Road Construction Department, and further, he was appointed as Treasurer Guard on a sanctioned vacant post by Memo No. 11 dated 04.01.2000. Thereafter, his services were confirmed on the sanctioned post and later on he was promoted and appointed as Correspondence Clerk on a regular pay scale vide Memo No. 158 dated 31.03.2000.

4. Meanwhile, the petitioner also passed Hindi Noting & Drafting Examination and was granted annual increments and pay revisions. His service book was maintained and verified regularly by the department.

However, in 2015, the department initiated an inquiry regarding the validity of his appointment and a show-cause notice was issued by Engineer-in-Chief on 09.12.2015. Despite the petitioner replied, his services were terminated vide Memo No. 6225(S) dated 13.11.2017.

Then, the petitioner challenged the termination order before the Court in W.P.(S) No. 7096 of 2017, wherein vide order dated 02.03.2021 the termination order was quashed and direction was given for reinstatement of the petitioner.

Thereafter, the said order was challenged by the State before the Division Bench in L.P.A. No. 35 of 2022, which was dismissed on 20.04.2023 and thereafter before the Hon'ble Supreme Court in SLP (C) Diary No. 29984 of 2023, which was also dismissed on 06.11.2023, thereby affirming this Court's decision.

5. Further, the petitioner filed Contempt Case (Civil) No. 733 of 2021 for non-compliance of the reinstatement order, after which the respondents reinstated the petitioner vide Memo dated 24.11.2023. However, the period from 13.11.2017 to 24.11.2023 was treated as "No Work, No Pay" under Rule 97 and Rule 180 of the Service Code.

6. Consequently, the petitioner was denied salary arrears, increments and other consequential benefits for the termination period. The petitioner submitted a representation stating that he was not gainfully employed during the period of termination and sought full back wages. Aggrieved of the non-redressal of his grievance, the petitioner has filed this writ application.

7. Learned counsel for the petitioner submitted that the petitioner was prevented from discharging his duties due to the

respondents' illegal action and not because of any misconduct or fault attributable to him, hence, the petitioner cannot be penalized for the period he was kept out of service.

8. He further submitted that the principle of "No Work No Pay" is inapplicable where an employee is wrongfully deprived of work by the employer as an employee cannot be denied wages when the inability to work is solely attributable to the employer's unlawful action.

9. Learned counsel further submitted that the period between 13.11.2017 to 24.11.2023 has been treated for the purpose of continuity, linking it with the past services, but for the same period, no arrears of salary or other benefits have been allowed to the petitioners.

10. *Per contra*, learned counsel for the respondents submitted that the period from 13.11.2017 to 24.11.2023 was rightly regulated under Rule 97(1)(a) & (b) read with Rule 180 of the Jharkhand Service Code, which empowers the competent authority to determine how the intervening period between termination and reinstatement is to be treated, and the competent authority, after due application of mind, treated the said period as Extraordinary Leave / "No Work No Pay", as the petitioner had not actually rendered service during the intervening period and no further benefits could be granted as per the provisions of Rule-97 of the Service Code, read with

Rule-180.

11. Having heard Ld. Counsel for the parties and upon perusal of the materials available on record, it transpires that in the earlier round of litigation, that arose from the order of termination of the petitioner, dated 13.11.2017, the writ petition was allowed in his favour wherein it was directed in the writ petition, being W.P.(S) No. 7096 of 2017, in its final order dated 02.03.2021, that the petitioner should be regularized/reinstated. The judgment of the Court attained finality, after having travelled upto the Hon'ble Supreme Court, and being confirmed throughout; the respondents were forced to pass the order dated 24.11.2023. In this order, at clause-8(iii), the respondents, though reinstated the Petitioner and treated the period of dismissal between 13.11.2017 to 24.11.2023 as continuity in services, but however, this period was treated as 'No Work, No Pay', and on this basis, consequential benefits including arrears of salary was denied.

12. It is the case of the petitioner that he was terminated from services; however, that action of the respondent-State has been termed as to be bad in the eyes of law, after which the petitioner had to be reinstated. Once the order of termination is quashed, it is deemed that incident has been rubbed out from the service career of the employee, as if it never existed. The natural outcome is reinstatement in a manner as if the

termination had never happened. The petitioner cannot be forced to suffer, for the wrong action of the respondent-authorities.

13. Admittedly, in the present case, the termination order was quashed and set-aside holding it bad in the eyes of law. Now, the only issue that remains to be considered is that for the period when the petitioner has remained out of service, he was anywhere gainfully employed or not, if he has to be granted the benefit of arrears of salary.

14. In this regard, the Court finds that the petitioner has stated at para-29 of the writ application that he was nowhere gainfully employed, and this statement has nowhere been controverted by the respondents in the counter-affidavit.

15. At this stage, it would be apposite to refer to the judgment of the Hon'ble Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324***, wherein the Hon'ble Supreme Court has explained the consequence of setting aside an order of illegal termination and the entitlement of an employee to back wages. The relevant portion of the said judgment is quoted hereinbelow:

> ***"22.*** *The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income*

> *gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages.* ***If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."***
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> ***(emphasis supplied)***

16. This Court, further, finds that the reference of Rule-97 of the Service Code, is totally mis-placed. Rule-97 of the Service Code deals with the period of suspension, and how it is to be treated, in the cases when the person is exonerated or not exonerated from the charges. The present case, however, is not of suspension, and hence, the provision of Rule-97 is not at all attracted. Further, Rule-180 deals with the extra-ordinary leave, without any salary.

17. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that since the petitioner's order of termination has been quashed and set aside as being unsustainable in the eyes of law, the petitioner cannot be made

to suffer for the illegal action of the respondents. Once the order of termination has been declared invalid and set aside, the legal consequence is that the petitioner is deemed to have continued in service as if the order of termination had never been passed. The petitioner has specifically pleaded that he was not gainfully employed during the period he remained out of service, and the said assertion has not been controverted by the respondents.

18. In view of the aforesaid discussions and in the light of the law laid down by the Hon'ble Supreme Court in ***G.T. Lad & Ors. v. Chemical and Fibres of India Ltd., (1979) 1 SCC 590*** and ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324***, this Court holds that the action of the respondents in treating the period from 13.11.2017 to 24.11.2023 as "No Work, No Pay" is unsustainable in law.

19. Consequently, the impugned order contained in Clause 8(iii) of Memo dated 24.11.2023, insofar as it treats the period from 13.11.2017 to 24.11.2023 as a period of "No Work, No Pay" and denies the petitioner arrears of salary and consequential service benefits for the said period, is hereby, quashed and set aside.

20. The respondents are directed to treat the aforesaid period as period spent on duty for all service purposes and to grant

the petitioner full back wages for the period from 13.11.2017 to 24.11.2023 along with all consequential benefits, in accordance with law. The aforesaid exercise shall be completed and the consequential dues shall be paid to the petitioner within a period of twelve weeks from the date of receipt/production of a copy of this order.

21. Accordingly, this writ application is allowed. Pending I.A.(s), if any stands closed.

(Deepak Roshan, J.)

Dated: 22/06/2026
Amardeep/
A.F.R

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25.06.2026