

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 7323 of 2019

Sunita Devi, aged about 56 years, w/o late Awadesh Kumar Ram, resident of Village-Suruhridih, PO-Telkathu, PS-Hasanpura, Distt-Siwan (Bihar)
... ... **Petitioner(s)**

Versus

1. State of Jharkhand
2. The Director General-cum-Inspector General of Police, Jharkhand, Ranchi, Police Head Quarter, PO & PS-Dhurwa, Dist.-Ranchi, Jharkhand
3. The Inspector General of Police, South Chhotanagpur Range, Office at Project Bhawan, PO & PS-Dhurwa, Dist-Ranchi, Jharkhand
4. The Deputy Inspector General of Police, Singhbhum (Kolhan) Range, PO & PS-Chaibasa, Dist-Chaibasa, Jharkhand
5. The Superintendent of Police, Chaibasa, PO & PS-Chaibasa, Dist-Chaibasa, Jharkhand
... ... **Respondent(s)**

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner(s) : Mr. Manoj Tandon, Advocate
Mr. Rakesh Kr. Roy, Advocate
Miss Ankita, Advocate
Miss Shivani Bhardwaj, Advocate
Mr. Siddharth Ranjan, Advocate
For the Respondent-State : Mr. Abhinay Kumar, AC to GA-I

JUDGMENT

C.A.V on 12/06/2025

Pronounced on 30/ 06 /2025

The instant writ application has been preferred by the Petitioner praying therein for quashing of part of the order dated 08.03.2019 (Annexure-4), whereby the Petitioner has been denied the salary of the intervening period from the date of dismissal i.e. 31.12.2005 till the date of reinstatement i.e. 07.03.2019 on the ground of “no work no pay” and treated the same as extraordinary leave.

2. The brief facts of the case as per the pleadings are that the Petitioner was initially appointed as Constable in the year 1989 and thereafter, she continued to discharge her duties. During her posting at Chaibasa, she suffered from illness and was treated by the Doctor from 07.11.2002 till 16.02.2003 and after recovery she joined duty on

17.02.2003. The petitioner again underwent treatment of the Doctor from 20.04.2003 till 22.06.2003 and she again joined her duty on 23.06.2003. Due to this intermittent absence, a departmental proceeding was initiated against her. The Inquiry Officer conducted *ex parte* enquiry holding that the petitioner is guilty of charges. The disciplinary authority thereafter awarded the punishment of dismissal from service vide its order dated 31.12.2005.

Being aggrieved, the petitioner preferred an appeal; however, the same was rejected by the appellate authority vide memo dated 26.03.2008. Subsequently, the Petitioner preferred *WP(S) No. 3654 of 2010* wherein the writ Court allowed the writ application of the petitioner and quashed the order of dismissal vide its order dated 27.12.2015. The State assailed the said order by filing an appeal being *LPA No. 587 of 2017* which was disposed of, sustaining the writ Court's order, and a direction was issued upon the Respondents to re-determine the question of punishment upon giving opportunity of hearing to the writ petitioner. Pursuant thereto, the Petitioner made representation before the competent authority and she was reinstated but in the order of reinstatement, the Petitioner has been denied the back wages and other consequential benefits and the intervening period from the date of dismissal i.e. 31.12.2005 till the date of reinstatement i.e. 07.03.2019 has been considered as extraordinary leave.

3. Learned counsel for the Petitioner submits that in compliance of the order passed by this Court though the Petitioner has been reinstated in service vide order dated 08.03.2019 but the Respondents without any authority have considered this period as extraordinary leave. He further submits that it is a settled principle that an employee is entitled for the full salary if he/she is not responsible for not attending the duty. In the instant case, the writ application of the petitioner was allowed in the year 2015 and it was the State who went in appeal which was dismissed by the Division Bench of this Court and finally upon direction by the Division

Bench in appeal; though she has been reinstated but the entire period has been taken as extraordinary leave and no salary has been paid on the ground of “no work no pay” which is bad in law. Even Rule 841 of the Jharkhand Police Manual which deals with allowance during suspension; the action of the Respondents in not paying the salary is bad in law and they should re-consider her case.

4. Learned counsel for the Respondents relying upon the counter affidavit supported the impugned order and submits that the petitioner has not done any duty for the intervening period and because of her fault she was dismissed after a proper proceeding and her dismissal was since quashed, she has been reinstated; as such there is no valid reason for payment of full salary.

5. Having heard learned counsel for the parties and after going through the documents available on record it appears that treating the service as extraordinary leave is somehow or the other not proper.

6. Rule 236 of the Jharkhand Service Code talks about extraordinary leave. Relevant part of Rule 236 is quoted herein below:

“236. Extraordinary leave may be granted to a Government servant in special circumstances:-

*(i) when no other leave is admissible under these rules.
(ii) When, other leave being admissible, the Government servant concerned applies in writing for the grant of extraordinary leave.”*

7. In the instant writ application, the respondents have not brought on record any application filed by the petitioner for treating the period as extraordinary leave because as per the aforesaid rule the Government servant has to apply in writing and granting *suo moto* extraordinary leave is not permissible. Further, when the Petitioner has been reinstated, she became entitled for all leave etc.; what her co-employees availed or entitled.

8. Even otherwise, Rule 841 of the Jharkhand Police Manual deals with allowance during suspension. Rule 841(e) deals with pay, allowance and treatment of service on reinstatement. Relevant part of the Rule 841(e) is quoted hereinbelow:

*"841(e) Pay allowance and treatment of service on reinstatement.-
1) When a member of the service who has been dismissed, removed, compulsorily retired or suspended is reinstated then for his retirement or superannuation while under suspension, the authority competent shall make order as to –*

*(a) the pay and allowances which shall be paid to him for the period of his absence from duty or of suspension ending with the date of retirement; and
(b) whether or not, the said period shall be treated as a period spent on duty.
(2) (a) where such competent authority holds that he has been fully exonerated, he shall be granted the full pay to which he would have been entitled had he not been dismissed suspended, etc., together with any allowance which he was in receipt immediately prior to his dismissal, suspension, etc., or may have been sanctioned subsequently.*

(b) In all other cases, he shall be granted such proportion of such pay as such the competent authority may direct; provided that the payment of allowance shall be subject to such conditions as may be applicable to it:

Provided further that this shall not be less than the subsistence and other allowances admissible under Rule 841 (a).

(3) (a) In a case falling under clause (a) of sub-rule (2) the period of absence from duty shall for all purposes be treated as a period spent on duty.

(b) In a case falling under clause (b) of sub-rule (2) the period of absence from duty shall not be treated as a period spent on duty unless the competent authority specially directs as such in writing. ...”

Emphasis Supplied

9. After going through the aforesaid rule, it appears that if the delinquent is fully exonerated, he/she shall be entitled for full salary; however, Rule 841(2)(b) clearly stipulates that the delinquent shall be granted such proportion of such pay as competent authority may direct; 841(3)(b) further clarifies that the period of absence from duty shall not be treated as period spent on duty unless the competent authority specially directs as such in writing.

Thus, even the Rules under the Jharkhand Police Manual gives discretion upon competent authority with regard to proportion of payment. In the instant case, admittedly the Respondents lost the case and the writ application of the petitioner was allowed by quashing the impugned order in the year 2015 itself. It was the Respondent who preferred an appeal and the same was also rejected and after that the Petitioner has been reinstated in service. Therefore, it cannot be said that the whole period of absence from duty of this Petitioner was only due to

her fault.

10. Accordingly, looking to the overall facts and circumstances of the case, the part of the impugned order dated 08.03.2019 bearing Memo No. 580/Ra. Kaa (Annexure-4 to the writ application) to the extent that Petitioner has been denied the salary of the intervening period from the date of dismissal i.e. 31.12.2005 till the date of reinstatement i.e. 07.03.2019 on the ground of “no work no pay” and treating the same as extraordinary leave, is hereby, quashed and set aside.

The matter is remitted back to the competent authority to pass a fresh order on the issue of salary for the intervening period i.e. from the date of dismissal till the date of reinstatement strictly in the light of discussions made hereinabove. It goes without saying that the entire exercise shall be completed within a period of 12 weeks from the date of receipt/production of copy of this order and the Respondents are further directed to pay the amount which would be decided by the competent authority pursuant to passing of fresh order within a further period of 4 weeks.

11. The writ application stands allowed in the aforesaid terms. Pending I.A., if any, also stands closed.

(Deepak Roshan, J.)

Amit
N.A.F.R