(2009) 02 JH CK 0054

In the Jharkhand High Court

Achyutanand Singh APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Citation : (2009) 02 JH CK 0054

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—In this writ petition, the prayer of the petitioner is for quashing Memo No. 2635 dated 04.06.2003 (ANNEXURE-3) issued under the signature of the Superintendent, Birsa Munda Central Jail, Ranchi, whereunder, the Treasury Officer, Saran, Chapra, was directed to recover a sum of Rs. 41,804/- from the amount of gratuity payable to the petitioner. Further prayer of the petitioner is for direction to the respondents to pay Rs. 41,804/- which was illegally deducted from the amount of gratuity pursuant to Annexure-3 and also for payment of salary for the period November, 2002 to 03,01.2003 i.e. the period during which the petitioner had actually worked.

2. The case of the petitioner is that he was appointed as a Constable on 01.08.1971 and was posted at Hazaribagh in Central Jail. He retired from service on 31.05.2003 while posted in Birsa Munda Central Jail, at Ranchi. Though as per the entry made in his Service Book about his age, he was to retire from service on 31.05.2002 after completing the age of superannuation but he was not retired and he continued to perform his duty. It is said that the petitioner continued to work till 03.01.2003 and thereafter, by order No. 62, dated 03.01.2003, he was superannuated from service w.e.f. 31.05.2003 vide Annexure-1 to the writ petition.

3. The grievance of the petitioner is that though he worked from 01.06.2002 to 03.01.2003, but no salary was paid to him for the months of November and

December, 2002. According to the petitioner, he was paid his retiral dues but subsequently, by issued of Memo No. 2635 dated 04.07.2003, the Superintendent, Birsa Munda Central Jail wrote to the Treasury Officer, Chapra, Bihar, the place from which the petitioner was getting his pension, directing to adjust Rs. 41,804/- from the amount of gratuity payable to him. Pursuant thereto, the said amount was recovered from the amount of gratuity of the petitioner till October, 2002. It is submitted on behalf of the petitioner that he continued in service not on his misrepresentation of any kind but because of the oversight on the part of the respondents. The aforesaid amount was illegally ordered to be recovered from the gratuity of the petitioner though admittedly, the petitioner performed his duty for that period he was paid salary till he continued in service.

4. It is submitted on behalf of the petitioner that in view of the decision of this Court in the case of Narayan Singh Vs. State of Bihar and Others, and a decision of the Full Bench of this Court in the case of The State of Jharkhand and Others Vs. Padmalochan Kalindi and Another, , no amount can be recovered from the pensionary benefits including gratuity of a retired employee except by an order passed u/s 43(B) of the Bihar/Jharkhand Pension Rules.

5. The respondent No. 3 - Superintendent of Bihar Munda Central Jail, Ranchi, by filing a counter affidavit has stated that according to the entries in the service book, the date of birth of the petitioner was 18.05.1944 on the basis of which, he should have retired on 31.05.2002 but he concealed this fact and he never informed about his date of retirement which was ultimately detected on 03.01.2003 and accordingly, the respondent No. 3 passed the order as contained in Annexure-1 to the writ petition. It has further been stated in the said counter affidavit that as per the direction of the Accountant General, Jharkhand, the Treasury Officer, Chapra was informed to recover the amount of Rs. 41,804/- from the gratuity of the petitioner.

6. The Accountant General, Jharkhand has filed a separate counter affidavit wherein, it has been stated that on receipt of sanction for authorization of pensionary benefits from the Superintendent of Birsa Munda Central Jail, Ranchi, service book and pension papers of the petitioner, vide letter dated 19.05.2003, the authority for pension, gratuity and commuted value of pension was issued on 16.06.2003. While issuing authority for gratuity, a sum of Rs. 41,804/- was shown as Government due as per instruction of sanctioning authority i.e. Superintendent of Birsa Munda Central Jail, Ranchi.

7. Mr. Sudarshan Shrivastava, learned Counsel .appearing for the Accountant General, Jharkhand submitted that since the petitioner had no legal right to continue in service after he crossed the age of superannuation i.e. 31.05.2002 and therefore, any amount paid to the petitioner, which was not legally payable to him, has rightly been ordered to be recovered from his gratuity.

8. The facts of case of Radha kishan v. Union of India and Ors. reported in

1997(2) PLJR 129 was more or less similar to the present case, wherein a Government servant had remained in service for a period of three years after the date he attained the age of superannuation. When action was sought to be taken for recovery of the amount paid to him beyond the period of service he was supposed to retire, he challenged the same in the court of law and ultimately, the Supreme Court, by rejecting his contention that the person should not be denied the legitimate salary for the period during which he had actually remained in service held that acceptance of such plea will encourage manipulation with impunity.

9. Division Bench of this Court in the case of State of Jharkhand and Others Vs. (Smt.) Girish Kumari Prasad and Others, has also held that when the matter finally reaches the Accountant General and it is found that someone had been given something that is not due, either because of negligence, collusion or fraud. Then it is the duty of the Accountant General being the guardian of the finances of the State to rectify the mistake committed either by omission or commission by someone in the Department. There cannot be any estoppel against seeking to recover an unauthorized payment made to undeserving person. The fact that someone had made an error in giving the benefit to a person which was not due, would not clothe him with any special right.

10. Similar view has been taken by the learned Single Judge of this Court in the case of Fulmani Devi v. State of Jharkhand and Ors. in W.P.(S) No. 4929 of 2007, which was disposed of finally on 20.11.2008. A copy of the order was placed before me at the time of hearing, from perusal of which it appears that the Writ Petition was directed against the order by which the Accountant General in his pension payment order had shown an amount of Rs. 3,60,954/- as Government due, which was ordered to be deducted from the amount of pension payable to the writ petitioner and consequently, the Treasury Officer was directed to adjust the aforesaid amount from the pension and gratuity of the writ petitioner. According to the writ petitioner, she was retired from the post of sweeper and in course of service, she was examined medically and her age was assessed to be 56 years by the Civil Surgeon as on 30.11.1995. Accordingly, her age was entered in the service book and she was supposed to retire on 3.03.1998 but she went on putting her service until 30.11.2004 when she was asked to vacate the post and ultimately, the salary paid to her beyond the period from the date of her retirement, was ordered to be recovered from her pensionary benefits, which was challenged by her by filing the writ petition on the ground that she discharged her duty during the period and there was no misrepresentation on her part. The learned Single Judge held that the petitioner was quite aware about the date of superannuation, still she continued in service and drew salary to which she was not entitled to and under this situation, any order regarding recovery of the amount drawn in excess cannot in view of the ratio laid down in a case of Radha Kishun v. Union of India and Ors. (Supra), be held to be illegal.

11. Therefore, in view of the facts and circumstances stated above, I find that

the present case is fully covered by the decision of the Supreme Court in the case of Radha Kishun v. Union of India and Ors. (Supra) as well as the decision in the case of State of Jharkhand and Ors. v. (Smt.) Girish Kumari Prasad and Ors. (Supra) as also in the case of Fulmani Devi v. State of Jharkhand and Ors. (Supra). Accordingly, I find no illegality in the order dated 04.06.2003 as contained in Annexure-3 by which it was directed to recover a sum of Rs. 41,804/- from the amount of gratuity payable to the petitioner.

12. Accordingly, having found no merit, this writ petition is dismissed. However, there will be no order as to costs.