(2014) 01 JH CK 0134

In the Jharkhand High Court

Case No : Writ Petition (S) No. 452 of 2013

Amarendra Paul APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Citation : (2014) 7 AJR 166 : (2014) 2 JLJR 1

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Saurav Arun and D.K. Dukpey, for the Appellant; Richa Sanchita, Advocate for Respondent No. 6 and J.C. to G.P.-IV., for the Respondent

Judgement

Aparesh Kumar Singh, J.—The instant interlocutory application has been filed by the petitioner to challenge the letter bearing No. 730 dated 04.03.2009, issued by the Director, Secondary Education, Jharkhand, Ranchi, to the Deputy Director of Education, Santhal Pargana, Dumka, as per which, he had been directed to take steps for recovery of the amount, paid in excess to the petitioner as salary, in view of the objections made by the Office of the Accountant General, Jharkhand and after due rectification of the pay fixation of the petitioner, send the same to the Office of the Accountant General, Jharkhand, Ranchi for finalization of his pension and gratuity. Learned counsel for the petitioner submits that the said communication has been brought on record by way of counter affidavit as Annexure-E by respondent No. 2, which clearly affects the case of the petitioner adversely as it has been issued without any opportunity of show cause or notice to the petitioner, therefore, the same is also sought to be challenged.

2. It is not in dispute that the aforesaid letter is in context of finalization of pension and gratuity of the petitioner and has been brought on record as Annexure-E to the counter affidavit. It is also evident that consequent to this letter, the Office of the Accountant General, (A & E) Jharkhand, Ranchi had also issued GPO No. 413/10-11 dated 28.6.2010, whereby a sum of Rs. 4,53,424.00 has been recovered from the Gratuity of the petitioner. The petitioner has

challenged the said recovery in the main writ application as has been made without any opportunity of show cause or notice and after his retirement on 31.1.2006 itself.

3. In that view of the matter, the proposed amendments are allowed.

4. Accordingly, I.A. No. 7886 of 2013 stands disposed of.

5. Let the instant I.A. be a part of the writ petition.

W.P. (S) No. 452 of 2013

6. Heard learned counsel for the parties.

7. In the instant case, the facts, which are not in dispute is that the petitioner after having worked as a Teacher in the Rani Mandakani High School, Korogram, Deoghar, retired on 31.1.2006. On account of non-payment of his post retirement dues, he had approached this Court in W.P.(S) No. 4077 of 2007, which was disposed of by judgment at Annexure-1, dated 23.11.2007 to enable him to represent before the District Superintendent of Education, Deoghar, who, in turn, was directed to take a decision in the matter by passing appropriate order within stipulated period. It is the contention of the petitioner that rest of the post retirement dues have been paid but he was surprised to know that a sum of Rs. 4,53,424.00 has been recovered as Government Dues from the gratuity, which is evident from Annexure-2, GPO No. 413/10-11, dated 28.6.2010 issued by the Office of the Accountant General, Jharkhand, Ranchi. It is submitted that the deduction of the aforesaid amount is wholly unjust and arbitrary having been done without giving opportunity to show cause or notice to the petitioner after his retirement. There is no departmental proceeding pending or initiated against him, even after, his retirement. In such circumstances, he has been compelled to move before this Court.

8. The respondents, in their counter affidavit, have taken a plea that at the time of finalization of pension and gratuity of the petitioner, an objection was raised by the Office of the Accountant General, Jharkhand, which was examined by the respondent-Regional Deputy Director of Education, Dumka, it was found by him that the petitioner has been erroneously paid the selection scale with effect from 1.4.1987 though it was admissible from 1.4.1990, which has resulted in over payment to the petitioner thereafter. The same was examined and after correction, the order at Annexure-F, dated 22.9.2008 was issued by the Regional Deputy Director of Education, Dumka, communicating the same to the Director Secondary Education, Ranchi.

9. The petitioner having availed of an excess pay beyond his admissible salary and emoluments, he is not entitled to retain the same as it would amount to unjust enrichment to the petitioner, which is contrary to law.

10. Learned counsel for the respondents, therefore, submits that the aforesaid deduction has been made to recover the salary paid in excess from his gratuity

amount vide Annexure-2.

11. Learned counsel appearing for Accountant General, Jharkhand, Ranchi, also supports the contention of the respondents and submits that based upon rectified pay fixation of the petitioner, GPO No. 413/10-11, dated 28.6.2010 has been issued after deducting the amount in question.

12. I have heard learned counsel for the parties and have gone through the relevant materials on record. At the outset, it is significant to state that the petitioner claim that there has been no departmental proceeding pending or initiated against him during his service and even after his retirement has not been refuted by the respondents. It is not in dispute that before deduction of Rs. 4,53,424.00 as Government dues from the gratuity amount payable to the petitioner vide GPO No. 413/10-11, dated 28.6.2010 issued by the Senior Accounts Officer, Office of Accountant General, Jharkhand, Ranchi, no notice or opportunity of show cause was issued to him. It is also evident from perusal of the averments made in the counter affidavit and Annexure-F dated 22.9.2008 as also communication dated 43.2009 that the exercise to re-fix the scale of the petitioner has been carried out after his retirement, which has led to deduction of the aforesaid amount from his gratuity. The petitioner, in his rejoinder, has tried to explain that the aforesaid scale was given to him by orders issued by the competent authorities from time to time, such as orders dated 26.9.1977, Annexure-6 to the rejoinder as also order dated 30.6.1978 fixing the new P.G.T. scale and subsequently by letter dated 29.1.1982 by which the petitioner was granted scale of Rs. 510-980 adding increments after every three years.

13. Learned counsel for the petitioner has also relied upon order dated 22.8.1998 passed by Regional Deputy Director of Education, Dumka by which the petitioner was given the senior scale as per the decision of the Divisional Promotion Committee meeting held on 3.9.1997.

14. In the aforesaid background, it is the contention of the petitioner that the aforesaid deduction was made after four years of his retirement, which is wholly unjust and arbitrary and in violation of the principle of natural justice.

15. The dues of pension and gratuity are earned by an employee on account of services rendered during his career and are not in the nature of bounty rather the employee has a justified legal right to earn the same, which has been taken away without following the principle of natural justice or any proceeding against him and that too after four years of his retirement. The respondents also do not dispute that no opportunity of show cause or notice was given to the petitioner before such action was taken. In the aforesaid facts and circumstances, the deduction of the amount after four years of his retirement is wholly unjust and arbitrary.

16. In that view of the matter, the part of GPO No. 413/10-11, dated 28.6.2010, which deducts the amount of Rs. 4,53,424.00 from the total gratuity amount payable on retirement of the petitioner can not be sustained in eye of law and it

is, accordingly, quashed.

17. The respondents are directed to refund the aforesaid amount of Rs. 4,53,424.00, within a period of eight weeks, to the petitioner from the date of receipt of a copy of this order.

18. Counsel for the respondent-State submits that liberty may be given to take decision in accordance with law.

19. It goes without saying that if such an act is permissible to the respondent-State, in law, it is open to them to do so after following the principles of natural justice.

20. The writ petition is, accordingly, allowed in the aforesaid terms. I.A. No. 6048 of 2013 also stands disposed of.