(2016) 10 JH CK 0029

In the Jharkhand High Court

Case No : W.P.(S) No. 7493 of 2012

Amarnath Jha APPELLANT

Vs

Accountant General, Jharkhand RESPONDENT

Date of Decision : 28-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 AIRJharR 823 : (2017) 1 JBCJ 606 : (2017) 2 JCR 495 : (2017) 1 JLJR 157

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Tirtha Nandan Jha, Advocate, for the Petitioner; J.C to G.P.IV, for the State; Mr. S. Shrivastava, Advocate, for the Accountant General; J.C to G.A., Bihar, for the State of Bihar; Mr. Ratnesh Kumar, Advocate, for the S.B.I

Final Decision : Dismissed

Judgement

Pramath Patnaik, J.—In this accompanied writ application, the petitioner has approached this Court for quashing of the letter dated 09.11.2009 (Annexure-3) issued by the respondent no.2, the letter dated 01.12.2009 (Annexure-4) issued by respondent no.8, the letter dated 09.11.2010 (Annexure-5) issued by the respondent no.2 and letter dated 15.02.2012 (Annexure-10) issued by respondent no.5 whereby the benefits of the sixth pay revision in the pension of the petitioner already credited in the pension account, amounting to Rs.1,63,903/- for the period of 01.01.2006 to 01.04.2007 has been illegally withdrawn and for direction to the respondents to recredit the said amount with interest.

2. The brief facts, as delineated in the writ application, is that petitioner was appointed as Assistant Engineer, Department of Irrigation, Govt. of Bihar and joined the post on 23.07.1960 and retired as Chief Engineer of the Department on 31.01.1995. It is stated that after retirement the petitioner opted for payment of his pension from Ranchi treasury through State Bank of India, Ashoknagar

Branch, Ranchi being the resident of Ranchi, Jharkhand and is drawing pension as per rules of the undivided State of Bihar. Due to some miscalculation regarding pay fixation and consequent revision of pension, the petitioner gave representation dated 30.05.2009 and 02.09.2009 to the Branch Manager, Ashoknagar, SBI, Ranchi and Accountant General, Jharkhand vide Annexure-1 series to the writ application. Pursuant to the said representation, the Accountant General, Jharkhand vide letter dated 09.11.2009 (Annexure-3) informed the Central Pension office SBI Administrative office Patna that the petitioner has retired from Samastipur (Bihar) and as such matter regarding fixation of pension etc. will be done by A.G., Bihar, Patna. It is further stated that Deputy General Manager, SBI, Jharkhand without having any order of Accountant General, Bihar in pursuance to the letter of Accountant General, Jharkhand, vide letter dated 01.12.2009 informed the petitioner that benefit of sixth pay revision given to the petitioner as pensioner of Jharkhand State is wrong and as such excess payment of Rs.1,63,903/- credited in his account has been withdrawn as evident from Annexure-4 to the writ application. The Accountant General (A & E), Jharkhand, Ranchi vide letter dated 09.11.2010 informed the Treasury Officer, Doranda, Ranchi that revised pension of the petitioner will be given w.e.f. 01.04.2007 as per Annexure-5 to the writ application. It is further stated that after bifurcation, in pursuance to resolution dated 28.01.2002, the petitioner as per his option was rightly drawing his pension from the State of Jharkhand. The Government of India, Ministry of Power vide order dated 03.11.2006 in compliance of order of the Hon''ble Supreme Court dated 01.12.2006, taken a decision that after bifurcation pensionary benefits in case of retired employees shall be paid by the successor State from where such employee was drawing pension as evident from Annexure-7 series. It is further stated that as per Government of India decision as appeared in Clause-17(a) of the Gazette notification, the Government of Jharkhand vide resolution dated 28.02.2009, implemented the revision for the State Government employee w.e.f. 01.01.2006 as evident from Annexure-8 to the writ application. It is further stated that the State Bank of India, Jharkhand-I (respondent no.9) without any order or letter of Accountant General either of Bihar or Jharkhand or of Government of Jharkhand, recovered an amount of Rs.1,63,903/- from the account of the petitioner vide Annexure-9 to the writ application. Thereafter, by letter dated 15.02.2012 the Deputy Secretary, Department of Finance, Government of Jharkhand in complete suppression and disregard of the decision of the Government of India as well as Hon''ble Supreme Court as contained in Annexure-7 series, informed the petitioner that his pension shall be fixed as per resolution of Government of Bihar dated 23.09.2009 and not as per resolution of Government of Jharkhand dated 28.02.2009 so also in complete violation of Article 14 of the Constitution of India as evident from Annexure-10 to the writ application. Being aggrieved by the impugned orders, the petitioner having no other efficacious and alternative remedy, has approached this Court under Article 226 of the Constitution of India for redressal of his grievances.

3. Per contra, a counter affidavit has been filed on behalf of the Staterespondent nos.4 and 5 repelling the averments made in the writ application. It has been stated in the counter affidavit that since the petitioner is a retired employee of State of Bihar, he shall be guided by the circular, resolution, Government orders issued by the State of Bihar, the petitioner cannot claim the benefit at par with the employees of the State of Jharkhand. It has been further stated that the benefit of 6th pay commission was allowed to the employees of State of Jharkhand with effect from 01.01.2006 whereas the State of Bihar granted the benefit of 6th pay revision to its employees with effect from 01.04.2007 and when the mistake in payment of pensionary benefit of 6th pay revision of the petitioner was detected, an amount of Rs.1,63,903/- was recovered from the account of the petitioner, which was credited for the period 01.01.2006 to 01.04.2007. It is further stated that the petitioner has been given information in this regard vide letter dated 15.12.2012 (Annexure-A to the counter affidavit) that he will get benefit ofpension as per resolution of State of Bihar.

4. A counter affidavit has also been filed on behalf of the Accountant General, Jharkhand, Ranchi wherein it has been stated that petitioner had retired on 31.01.1995 while he was posted in Samastipur of the erstwhile State of Bihar and as such authorization of pension and revision thereof in the light of resolution of 6th CPC has to be done by the office of the Accountant General (A & E), Bihar, Patna as per the resolution published by the State of Bihar. Since the pension of the petitioner was inadvertently revised in the light of 6th CPC announced by the Government of Jharkhand, recovery of excess payment was made from the account of the petitioner.

5. A counter affidavit has also been filed on behalf of the respondent no.8-State of Bihar, wherein it has been stated that petitioner superannuated from the post of Chief Engineer, Water Resources Department, Samastipur (Bihar) in January 1995 and therefore, his post retirement benefits were sanctioned in terms of the provisions made in the Bihar Pension Rules and the concerning circulars issued by the Finance Department, Bihar. Being a pensioner of undivided State of Bihar pension of the petitioner is revisable in terms of the resolution dated 23.09.2009 issued by the Finance Department, Bihar and not in terms of the resolution dated 28.02.2009 of the Government of Jharkhand and as such Finance Department, Bihar vide memo dated 28.01.2010 (Annexure- A to the counter affidavit) requested the Finance Department, Jharkhand that the arrears of the petitioner be paid in terms aforesaid resolution of the State of Bihar.

6. A counter affidavit has also been filed on behalf of the respondent nos.9 and 10 wherein it has been stated that the Accountant General (A & E), Jharkhand, Ranchi vide letter dated 09.11.2010 informed the Treasury Officer, Doranda, Ranchi that revised pension of the petitioner will be debitable to the Government of Bihar as evident from Annexure-B to the counter affidavit. The Zonal office of the State Bank of India vide letter dated 01.12.2009 (Annexure-C to the counter affidavit) also informed the petitioner that he has wrongly been treated as

Jharkhand pensioner and this mistake is being rectified, and therefore, the writ petition being devoid of any merit is liable to be dismissed in limine.

7. After hearing learned counsel for the respective parties at length and on perusal of the record, I am of the considered view that the petitioner has not been able to make out a case for interference, due to the following facts and reasons:

(I) Admittedly petitioner is a retired employee of the State of Bihar and therefore, he is to be guided by the circular, resolution, Government orders issued by the State of Bihar and the petitioner cannot claim the benefit at par with the employees of the State of Jharkhand. As a matter of fact the benefit of 6th pay revision was allowed to the employees of State of Jharkhand with effect from 01.01.2006 whereas the said benefit was extended to the employees of the State of Bihar with effect from 01.04.2007. Inadvertently the petitioner has been given pensionary benefit of 6th pay revision with effect from 01.01.2006 and accordingly, pension of the petitioner has been revised and arrears of the revised pension were credited in the bank account of the petitioner. But, subsequently the bona fide error was detected and the benefit of 6th pay revision was to be admissible to the petitioner with effect from 01.04.2007 and therefore, the arrear credited in the account of the petitioner for the period from 01.01.2006 to 01.04.2007 has been withdrawn from the account of the petitioner. Law is well settled that the bona fide mistake can be rectified at any point of time, therefore, there is absolutely no illegality in withdrawing the inadmissible amount credited in favour of the petitioner.

(II) The zonal office of the State Bank of India vide letter dated 01.12.2009 informed the petitioner that the petitioner has wrongly been treated as Jharkhand pensioner and this mistake is being rectified and accordingly, steps are being undertaken to categorize the petitioner as Bihar pensioner, as evident from Annexure-C to the counter affidavit filed by the respondent nos.9 and 10. The counter affidavit filed by the Accountant General, Jharkhand discloses that the petitioner has retired on 31.01.1995 while he was posted in Samastipur of the erstwhile State of Bihar and after reorganization of States of Bihar and Jharkhand, Samastipur still exists in the successor State of Bihar. As such authorization of pension and revision thereof in the light of resolution of 6th CPC has to be done by the office of the Accountant General (A & E), Bihar, Patna as per the resolution published by the State of Bihar. Earlier, the pension of the petitioner was inadvertently revised in the light of 6th CPC announced by the Government of Jharkhand identifying him to be a pensioner of Jharkhand but later on, the Central Pension Processing Center at Patna as well as the concerned Branch of Bank while processing the case of the petitioner found that the petitioner belongs to Bihar and as such they revised the pension in accordance with the resolution of 6th CPC passed by the Government of Bihar resulting into recovery.

(III) The counter affidavit filed by the respondent no.8-State of Bihar also supports the impugned orders on the ground that there is absolutely no illegality or impropriety in the impugned orders.

8. In view of the reasons stated in the foregoing paragraphs, the impugned order dated 09.11.2009 (Annexure-3) issued by the respondent no.2, the order dated 01.12.2009 (Annexure-4) issued by respondent no.8, the order dated 09.11.2010 (Annexure-5) issued by the respondent no.2 and order dated 15.02.2012 (Annexure-10) issued by respondent no.5, do not warrant any interference by this Court.

9. Accordingly, the writ application is dismissed being devoid of merit.