
(2013) 09 JH CK 0029

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1911 of 2011

Anjani Kumar Choubey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 09 JH CK 0029

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Shree Krishna Pandey, for the Appellant; Amit Kr. Sinha for the University, for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. This petitioner has approached this Court for the second time for certain relief's relating to his service dues as well as arrears of salary.

2. Earlier he had preferred W.P. (S) No. 4587 of 2008, which was disposed of on 17.12.2008 by remitting the matter to the Vice-chancellor of the respondent University to assess the amount of arrears of salary and the retiral benefits, which are payable to the petitioners and take up the matter with the State Government within stipulated time. The State Government in turn was directed to ensure that the funds are released upon such requisition to the University so that the same may be disbursed under the heads of arrears of salary and other retiral benefits within stipulated period to the petitioners. Thereafter, the petitioner preferred a Contempt Petition being Cont. Case (Civil) No. 296 of 2009, which was, however, dropped vide order dated 04.08.2010. The cheque of Rs. 1,18,361/- was paid to the petitioner, however, he refused to accept the same, as, according to the petitioner, no details of such payments were disclosed and he was not ready to give undertaking to the effect that if the amount received by him is detected to be in excess of the actual payable amount, then he would refund the same to the respondent University.

3. In the present writ petition following relief's have been prayed for by the petitioner, which are quoted hereinbelow:-

(a) for assessment and release of balance of 25% salary from April 2005 to 31.03.2007, the date petitioner retired.

(b)(i) to assess, release and pay the retiral benefits in respect of enhanced gratuity of Rs. 3.50 Lacs on the basis of 100 % salary in the revised scale.

(ii) to pay leave encashment for 240 days on the basis of 100% salary in revised 5th pay scale, paid only for 180 days in old scale.

(iii) group insurance with compound interest @ 12.5% Rs. 3876/- (N.B. on above heads payment has been made on the basis of 75% salary in the old scale, whereas the petitioner is entitled for payment off retiral benefits on the basis of 100% salary in the revised new scale (6th pay scale w.e.f. 01.01.2006).

(c) payment of salary, arrear w.e.f. 01.01.2006 to 31.03.2007 in the 6th pay scale and retiral benefits for the period 01.01.2006 to 31.03.2007 on the basis of the same.

(d) for direction upon the respondent to release and pay the due salary arrear and other retiral dues in one lump sum, which has not been paid to the petitioner without any rhyme and reason even after detailed representations made before the respondent No. 4 and in violation of their own circulars and notifications in this respect.

(e) for payment of all the salary dues and retiral benefits like gratuity, leave encashment and group insurance with statutory and penal interest as per their own notification dated 11.12.1986 and others.

(f) for payment of the aforesaid dues on above heads in the light of different order of the Hon'ble High Courts in C.W.J.C. No. 1392/1989(R) Sita Ram Mishra Vrs. State of Bihar, C.W.J.C. No. 2280/1998 (R) Rajendra Pandey Vrs. Ranchi University & Others, C.W.J.C. No. 3689/1999 (R) Dr. Praanav Basak Vrs. Vinoba Bhavay University and Others, W.P.(S) No. 1508/2004 R.U. Grade 4 Association and Anjani Kumar Choubey Vrs. Ranchi University, W.P. (S) 4082/2005 Ramchadra Lal and Ors. Vrs. Ranchi University and Others, C.W.J.C. No. 11658/2003 Prof. Surendra Bahadur Singh Vs. The State of Bihar and Others, W.P.(S) No. 4587/2008 Bijan Bihari Sarkar & Anjani Kumar Choubey Vrs. Ranchi University & Ors. and that without any further discrimination as has been done with the petitioner vis-a-vis similarly situated, even junior Employees of the Respondent No. 3 & 4 Ranchi University, Ranchi.

4. A perusal of the prayer made in the present writ petition discloses that some of the prayer made relating to the assessment and release of balance of 25% salary from April 2005 to 31.03.2007 were also made in the earlier writ petition. He has also sought for payment of enhanced gratuity of Rs. 3.50 Lacs as post retiral dues in the present writ petition as also for the payment of leave

encashment of 240 days in the revised 5th pay scale in relation to 180 days which was paid for in old scale. The petitioner has also prayed for sanction of the amount of group insurance with compound interest in revised new scale w.e.f. 01.01.2006. The other relief's prayed in the present writ petition, which had not been made in the earlier writ petition, was in relation to payment of salary under the 6th pay revision for the period commencing from 01.01.2006. The petitioner is said to have retired in March, 2007.

5. According to the learned counsel for the respondent-University, though such a decision was taken by respondent-University to grant leave encashment of 240 days, but the same has not been approved by the State Government as yet and fund was released for 180 days leave encashment only. It is also stated on their behalf that till date, 5th pay revision is yet to be finalized in respect to the University employees. The petitioner has, however, sought payment upon implementation of 6th pay revision, which has not yet been done. It is submitted on their behalf that otherwise for the admissible claim of the petitioner, the University is only the recommending authority to the State Government, which, upon due satisfaction of the claim of the concerned university employees like the petitioner, in turn, sanctions funds for payment to such incumbent. In the circumstances, the ball lies in the court of the State Government. According to the respondent-University, such requisition has been made in respect of some of the admissible dues, as claimed by the petitioner in respect of the fixation of 5th pay revision and other employees vide Annexure-B/1 dated 22.10.2010 to the Director, Higher Education, Human Resources Department, Government of Jharkhand. In the circumstances, it is submitted that the claim of the petitioner is dependent upon such sanction of funds legally admissible to him by the State Government.

6. Learned counsel for the respondent-State, on the other hand, has taken a stand that as the petitioner was promoted from the post of Lower Division Clerk to the post of Auditor, he is entitled to the scale of Rs. 5500-9000/- and not to the scale of Rs. 10,000-15,000/-, as claimed by the petitioner. According to the respondent-State that upper limit for accumulation of unutilized earned leave for a University employee is 180 days only and not 240 days as claimed by the petitioner. It is also stated on their behalf that 6th pay revision has not been implemented to the University employees till now. In the circumstances, it appears that the petitioner may have a claim for seeking the benefits of 5th pay revision; for which recommendation has been made by the University vide Annexure B/1 to the respondent State.

7. There may also be a claim in relation to the enhanced gratuity as admissible. However, it is also apparent that benefits of 6th pay revision are still not implemented for the university employees. The petitioner has not accepted the payment in lieu of 25% of salary for the period April 2005 to 31.03.2007 during the last round of litigation. In the circumstances, once again since the petitioner has made claim for certain post retiral dues i.e. enhanced gratuity, arrears of

salary as stated hereinabove and also benefits of 5th pay revision as being legally due, the writ petition is disposed of without making any comments on the merits of the claim of the petitioner by giving him liberty to approach the respondent No. 4, Registrar, Ranchi University with a fresh representation duly supported with proper facts and documents. On receipt of such representation, the respondent No. 4, Registrar, Ranchi University shall consider the same in accordance with law and upon verification of relevant service records of the petitioner, pass a reasoned and speaking order within a period of 16 weeks thereafter.

8. If the petitioner is found to be entitled to any of the amount as claimed by him, necessary requisition for release of fund be made to the Director, Higher Education, Human Resources Department, Government of Jharkhand thereafter without any delay.

9. The Director, Higher Education, Human Resources Department, Government of Jharkhand, upon scrutiny of such requisition, if found to be legally admissible, shall release the requisite funds for disbursement in favour of the petitioner so that admissible payments are made to the petitioner thereafter within a reasonable time. Accordingly, this writ petition is disposed of in the aforesaid manner.