
(2013) 01 JH CK 0120

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2842 of 2009

Awadhesh Prasad

APPELLANT

Vs

Jharkhand State Electricity Board, General Manager-cum-
Chief Engineer, Dhanbad, Electrical Superintending Engineer,
Dhanbad and Electrical Executive Engineer, Dhanbad

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Citation : (2013) 1 JLJR 604

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : R.S. Mazumdar, Mr. Rajesh Kumar and Mr. Matinuddin Khan, for the Appellant; A.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J.—The petitioner retired from the post of Bill Clerk on 30th June, 2004. As the post retrieval benefits and other pecuniary benefits, to which the petitioner was entitled, were not finalized by the respondent, the petitioner moved before this Hon'ble Court in W.P. (S) No. 4511 of 2005, which was disposed of vide order dated 16.11.2005. It is the case of the petitioner that he approached the concerned authorities in the light of order passed in W.P. (S) No. 4511 of 2005 and thereafter certain retirement benefits were granted to him however other grievances of the petitioner were not redressed and therefore he again moved this Court in W.P. (S) No. 5289 of 2006. The said writ petition was disposed of by this court vide order dated 20.09.2006 with a direction to the petitioner to approach Respondent No. 2 and Respondent No. 2 was directed to pass a reasoned order in respect of each of the claims of the petitioner within a period of six weeks from the date of receipt/production of a copy of order dated 20th September, 2006.

2. Accordingly, the petitioner represented before the respondent-authority on 18.10.2006 however, finding no response from the concerned respondent-

authority, the petitioner was constrained to move this Court in Contempt (C) Case No. 39 of 2007. During the pendency of the Contempt case order dated 29th January, 2003 was passed rejecting the claim of the petitioner. As this Court was of the opinion that order dated 29th, January 2008 was not passed by the respondent in true letter and spirit of order dated 20th September, 2006 the respondent was directed to pass a fresh order.

3. The case of the petitioner is said to be considered by the respondent-authority and the order dated 15th March, 2008 has been passed rejecting the claim of the petitioner. In the light of observations made in order dated 4.4.2008 passed in Contempt (C) Case No. 39 of 2007, the petitioner submitted another representation on 27th April, 2009, however the petitioner did not receive any response from the respondents and therefore, he has filed the present writ petition seeking quashing of order dated 15th March, 2008 passed by the respondent No. 2 and for other reliefs.

4. The petitioner has contended that the petitioner has been discriminated in as much as other similarly situated person has been granted all retiral dues, final pension, gratuity along with compensatory interest although, the said person has also been convicted in Vigilance Case No. 04 of 1993. The petitioner has further relied on decision of this the matter also the impugned order dated 15.3.2008 is liable to be quashed.

5. Learned counsel for the respondents has drawn the attention of the Court to Rule 97(2) and Rule 99 of Jharkhand Service Code and contended that in view of the aforesaid Rules the claim of the petitioner has been withhold availing outcome of Vigilance Case. He has further submitted that the aforesaid Rules clearly contemplate that till the time an order of acquittal is recorded in the criminal proceeding, pensionary benefits to a person can be with held. In support of his contention that these Rules are applicable to the employees of Jharkhand Stare Electricity Board learned counsel has relied on judgments reported in Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others, .

6. Rebutting the arguments of learned counsel for the respondents, the counsel for the petitioner has submitted that respondents have neither taken the ground regarding the applicability of Rule 97 and Rule 99 of Jharkhand Service Code in their counter-affidavit nor it is appearing from the impugned order dated 15.3.2008 that the concerned authority has passed the impugned order under of the aforesaid rules. He has further submitted that admittedly no proceeding under Rule 43 of Jharkhand Pension Rules has been initiated against the petitioner and therefore pensionary benefits of the petitioner cannot be withheld merely on the ground of pendency of Vigilance P.S. Case No. 08 of 1997. He has further submitted that pension is not a bounty and the petitioner who retired on 30th June, 2004 has been deprived of major portion of his retrial benefits.

7. Learned counsel for the respondents has fairly submitted that in view of judgment of this Court in the case of Dr. Dudh Nath Pandey Vs. State of

Jharkhand & Ors, claim No. (IV) as appearing in impugned order dated 15.3.2008 would be granted to the petitioner.

8. On careful examination of order dated 15.3.2008 it is manifest that the claim of the petitioner has not been granted mainly on the ground of pendency of Vigilance case. Nowhere in the counter-affidavit or in order dated 15.3.2006 it has been stated that the claim of the petitioner has been withheld in view of Rule 97(2) read with Rule 99 of Jharkhand Service Code. Moreover, I find that neither Rule 97 (2) nor Rule 99 of Jharkhand Service Code is applicable in the present case. Rule 97 and Rule 99 of Jharkhand Service Code are extracted below:-

Rule 91 (2) Where the authority mentioned in sub-rule (1), is of opinion that the Government servant has been fully exonerated, or in the case of suspension, that it was wholly unjustified, the Government servant shall be given full pay and allowance to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be.

Rule 90 A servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence grant that may be granted in accordance with principles laid down in Rule 96) for such periods, until the termination of the proceedings taken against him or until he is released from detention and allowed to rejoin his duties as the case may be. An adjustment of his allowances for such period should therefore, be made according to the circumstances of the case, the full amount being given only in the event of the Government servant being acquitted of blame or (if the proceeding taken against him, were for his arrest for debt) of its being proved that the Government servant's liability arose from circumstances beyond his control or detention, being held by any competent authority to be unjustified.

9. A bare perusal of Rule 9(sic) (2) of Jharkhand Service Code, 2001 would disclose that under this Provision, the authority has no power to withhold pensionary benefits of the government servant. The contention of the learned counsel for the respondents that till the time, the government servant is fully exonerated in the Criminal Case, his retiral benefits as mentioned in impugned order dated 15.03.2008 can be withheld, is misconceived. Further, I find that Rule 99 of Jharkhand Service Code, 2001 relates to period of suspension only and it also does not extend any power to the authority to withhold the pensionary benefit under this Provision. Further, I find that this Court in the case of, "Dudh Nath Pandey Vs. State of Jharkhand & Ors." clear terms held as under:-

Under the Rule 43(a) and 43(b) of the Bihar Pension Rules, there is no power for the Government to withhold gratuity and pension during the pendency of the department of proceeding or criminal proceeding. It does not give any power to withhold leave encashment at any stage either prior to the proceeding or after

conclusion of the proceeding.

10. No proceeding as contemplated under the provision of Jharkhand Pension Rules has been initiated against the petitioner. This Court has on previous occasion indicated that the earlier reasoned order passed by the respondent was not in consonance with the true letter and spirit of order passed by this Court, nonetheless the respondent has again passed an order which clearly indicates non-application of mind on the part of the concerned respondent. Such order cannot be sustained in law and is liable to be quashed.

11. In view of the aforesaid facts and circumstances and considering the argument advanced by learned counsel for the petitioner and respondents, the Writ Petition is allowed. The impugned order dated 15.3.2008 is hereby quashed and the respondents are directed to make payment to the petitioner within a period of eight weeks. There shall however, be no order as to costs.