

(2011) 08 JH CK 0108

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4551 of 2008

Bachaspati Mishra

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 JCR 53

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Judgement

P.P. Bhatt, J.—Heard the learned Counsel for the Petitioner and perused the papers.

2. The present petition is filed by the Petitioner under Article 226 of the Constitution of India, for the following reliefs:

That in this instant writ application the Petitioner prays for grant of an appropriate writ in the nature of mandamus or an order director commanding upon the Respondents to pay and release an amount under the head of gratuity, leave salary, and remaining 10 % of pension and the difference of amount with the head of pension calculating the service period under suspension and its annual increments as also the subsistence allowance from 10-01-1996 to 21-8-1996 with interest of the rate of 10 % Per annum over and above statutory interest and within a specified period and for any other writ, order or direction as this Hon''ble Court deems fit and proper.

3. The short question arises in the matter is that whether in view of the judgment, dated 28.08.2007, passed in L.P.A. No. 714 of 2004, without initiating any proceeding under the Bihar Pension Rules, the Respondents are justified in withholding the amount of gratuity and 10 per cent pension and even other benefits. Another question, which arises for consideration is whether the Respondents would have any power to withhold gratuity on the part of the

pension in absence of any proceeding. 4. Learned Counsel for the State has submitted that No. counter affidavit has been filed till date. However, he has requested to grant some time so as to enable him to take instructions and submit counter affidavit.

5. As against that, learned Counsel for the Petitioner has submitted that appropriate direction may be issued to the State Government directing them to decide the representation of the Petitioner within a stipulated time, taking into consideration the judgment delivered by this Court in the case of Dr. Dudh Nath Pandey-versus-State of Jharkhand and Ors. reported in 2007 (4) J.C.R. 1 (Jhr) (FB).

6. Considering the aforesaid rival submissions and on perusal of the papers, it appears that the Petitioner is claiming benefit under the judgment rendered in the case of Dr. Dudh Nath Pandey (Supra), wherein, it has been held that there is No. power for the Government to withhold gratuity and pension during the pendency of the departmental 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.

7. In the light of the above facts and circumstances of the present case and also in view of the decision rendered by this Court in the case of Dr. Dudh Nath Pandey (Supra), the Respondents-State authorities are required to take decision upon the representation which may be submitted by the Petitioner. Accordingly, the Petitioner is directed to submit his representation within two weeks from the date of this order and upon receipt of the said representation, the Respondents-State authorities shall consider and decide the same in the light of the ratio laid down in the case of Dr. Dudh Nath Pandey (Supra) within two months. If the representation of the Petitioner will be decided in favour of the Petitioner by the Respondents-authorities, then it goes without saying that the consequential benefits thereof will be extended to him by the Respondents-State authorities without any further delay in accordance with relevant Rules. It is further clarified that if the representation of the Petitioner is turned down, then in that case, it will be open for the Petitioner to challenge the said decision before this Court.

8. The writ petition stands disposed of accordingly.