

(2014) 04 JH CK 0090
In the Jharkhand High Court
Case No : W.P. (S) No. 262 of 2010

Baleshwar Singh	Vs	APPELLANT
The Jharkhand State Electricity Board		RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Citation : (2014) 04 JH CK 0090

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Dhanajay Kr. Pathak and Sweta Rani, Advocate for the Appellant; R. Krishna, Advocate for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties.

2. The petitioner herein retired on 31.03.2007 from the post of Superintending Engineer of the Jharkhand State Electricity Board working in its Headquarter at Ranchi. Prior to his retirement itself, J.S.E.B. sought an information from B.S.E.B. about the pendency of any proceeding as well as for issuance of no dues certificate in respect of the petitioner. It was informed by the B.S.E.B. through letter dated 12.03.2007 that there is one public compliant against the petitioner, which is pending and no proceeding is pending against the petitioner as such. The Joint Secretary, B.S.E.B., Patna also issued a clearance certificate in favour of the petitioner apart from others as per Annexure-2 dated 02.04.2007. In the background of the aforesaid facts, by the impugned order dated 11.11.2008, Annexure-5 issued by the respondent No. 3, the Director of Accounts, JSEB, Ranchi an amount of Rs. 3,50,000/- due to the petitioner on the head of the gratuity has been withheld. Thereafter, vide Annexure-6, issued by the respondent No. 3, Director of Accounts, J.S.E.B., Ranchi further amount of Rs. 26,032/- was sought to be adjusted from arrears of pension of the petitioner, which comprises excess pay Rs. 18,032/- and TA advance Rs. 8,000/-. According to the petitioner, TA advance of Rs. 8,000/- has subsequently been adjusted after

submission of travelling allowances bill by the petitioner. Therefore, a sum of Rs. 3,68,032/- has been arbitrarily withheld from the pension and gratuity of the petitioner without any proceeding initiated under Rule 43(b) of the Jharkhand Pension Rules after his retirement or finding of guilt arrived at in any pending departmental proceeding either, during his service career. The petitioner has submitted that the impugned order is, therefore, in teeth of the judgment rendered by the Full Bench of this Court in the case of Dr. Dudh Nath Pandey Vs. The State of Jharkhand, The Secretary, Animal Husbandry and Fishery Department, Government of Jharkhand, The Joint Director (Director) (Poultry), Animal Husbandry Department and The Accountant General, and the same view has been upheld by Hon"ble Supreme Court in the judgment rendered in the case of State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, . Therefore, the impugned order should be quashed and the amount recovered should be directed to be released in favour of the petitioner.

3. Learned counsel for the respondents submits that during the period he had worked in B.S.E.B., it was noticed that in relation to transfer of certain materials from one store to another store during the period 1998 to 1999, there was shortage of material worth approximately Rs. 3,48,000/- and odd, and the petitioner was issued show cause notice by the erstwhile Bihar State Electricity Board. The petitioner was again served with a notice. Thereafter, Electrical Superintendent Engineer issued a letter to the Secretary of the JSEB vide dated 08.06.2002, Annexure-E inter alia stating that the materials in question have not been regularized by the petitioner from the earlier place of his posting and he has obtained pay on his own which shows act of indiscipline on his part. Therefore, he recommended for a disciplinary enquiry against the petitioner for recovery of an amount of Rs. 3,48,032/-. The respondents have further enclosed correspondence undertaken from the Executive Engineer, Barh with the Superintendent Engineer, Patna circle to the effect that the said materials were not regularized. They have also enclosed the correspondence made between the Joint Secretary, JSEB and the Secretary, BSEB as Annexure-C dated 12.03.2008 on the subject of the regularization of the materials dispatched from the Central Store, Digha to Divisional Store, Bakhtiyarpur during the said period of posting of the petitioner. Further two documents Annexure-A and B dated 07.04.2009 and dated 15.05.2009 respectively are in the nature of correspondence and notices to the petitioner asking him to show cause as to why a proceeding under Rule 43(b) be not initiated against him.

4. The summary of the aforesaid documents, which are on record in the counter affidavit, therefore, disclose that the respondents have actually not initiated any departmental proceeding against the petitioner during his period of service or adjusted the alleged-amount while he was in service. They have also not initiated a departmental proceeding under Rule 43(b) after his retirement on the alleged charges of irregularities in the material supplied from the Central Store, Digha to Divisional Store, Bakhtiyarpur for the period in question.

5. In sum and substance, therefore, the withholding of Rs. 3,50,000/- from the gratuity of the petitioner and a sum of Rs. 18,032/- from the pension of the petitioner without any finding of guilt of misconduct in any departmental proceeding during his service career or any proceeding started after his retirement under Rule 43(b) of the Jharkhand Pension Rules, is not sustainable in view of the well settled legal position laid down by the Full Bench of this Court in the case of Dr. Dudh Nath Pandey (Supra) and the same view being upheld by Hon"ble Supreme Court in the judgment rendered in the case of State of Jharkhand & Others Vs. Jitendra Kumar Srivastava & Anr. (Supra). Pension and gratuity of a retired employee can only be withheld upon conclusion of a finding of guilt in a departmental proceeding initiated under Rule 43(b) of the Jharkhand Pension Rules after his retirement or on conviction in any criminal trial, under the relevant provision of the Jharkhand Pension Rules which also applies to the employees of the Jharkhand State Electricity Board as well.

6. In that view of the matter, the impugned action of the respondents cannot be sustained in the eye of law as well as on facts. The order of withholding of gratuity vide Annexure-5 dated 11.11.2008 to the tune of Rs. 3,50,000/- and a sum of Rs. 18,032/- from his pension vide Annexure-6 dated 30.10.2008 are, accordingly, quashed.

7. The petitioner, therefore, would be entitled to the admissible gratuity and pension in accordance with law within a reasonable time.

8. Accordingly, the writ petition is allowed in the manner indicated hereinabove.