
(2014) 07 JH CK 0011
In the Jharkhand High Court
Case No : W.P.(S) No. 5709 of 2009

Biranchi Rout

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (2015) 1 JLJR 2

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Saurav Arun and D.K. Dubey, Advocates for the Appellant; A. Allam, Advocates for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the petitioner and the State. The petitioner has been imposed with a punishment of withholding of the entire amount of pension and gratuity by the impugned order as contained in Annexure-3 bearing No. 166/2010, Memo No. 957 dated 15.7.2010 issued by the Deputy Commissioner, Dumka. The said order has been passed on the basis of findings of a departmental inquiry initiated against the petitioner on 28.7.1998 and after issuance of second show cause notice upon him. As per the impugned order, the petitioner was Incharge of the Cash and Accounts Section of the District Welfare Office, Dumka during the period of strike by the non-gazetted employees between 24.2.1997 to 25.5.1997. During the course of audit for the said period, irregularities in the maintenance of the accounts were detected and the Deputy Commissioner, Dumka enquired the matter through the Project Officer, Range Dumka and the District Accounts Officer by letter dated 23.7.1997 which reveals embezzlement of a sum of Rs. 3,97,956.77 by the petitioner. The petitioner was served with a show cause notice on 28.8.1997, reply of which was not found to be satisfactory. Thereafter, an FIR was registered on 29.9.1997 against him in Dumka P.S. for the alleged offence. He was placed under suspension through order dated 2.10.1997. The petitioner was in the meantime convicted by the Judicial Magistrate, 1st Class on 15.9.2006 in T.R. Case No.

94/2006 and sentenced to undergo R1 for 2 years with a fine of Rs. 10,000/- and in default, for a simple imprisonment of 6 months. In the appeal preferred by the petitioner before the Learned Sessions Judge, Dumka, he has been acquitted by the judgment dated 8.8.2008 passed in Criminal Appeal No. 96/2006. Upon obtaining the opinion of the Government Pleader, the Deputy Commissioner issued second show cause notice upon him through memo dated 13th May, 2010 and 23rd June, 2010 which he replied on 25.6.2010. Having found the reply of the petitioner unsatisfactory, he has been imposed punishment of withholding of the entire amount of pension and gratuity. The petitioner incidentally had retired on 31.1.2008 before issuance of the impugned order.

2. Learned counsel for the petitioner has assailed the impugned order, inter alia, on the following grounds:--

"(i) That after his retirement no specific order for continuance or initiation of a departmental proceeding was initiated in terms of Jharkhand Pension Rules for withholding of his pensionary benefits.

(ii) That he has been acquitted by the learned Appellate Court in criminal case which was prosecuted on the identical charge, for which he has proceeded departmentally. Therefore, such a punishment in the departmental proceeding was not warranted when the learned Sessions Judge had categorically observed that there was no iota of the documentary evidence to fix criminal liability under Section 409 IPC upon the appellant.

(iii) The impugned order passed by the Deputy Commissioner, Dumka is without jurisdiction as under Rule 43(b) of the Jharkhand Pension Rules, it is only the State Government which can withhold the pension or any part of it upon finding of guilt arrived at in a departmental proceeding initiated against a retired employee subject to the conditions laid down under the proviso to the said rules. It is submitted that, therefore, the impugned order deserves to be set aside."

3. The respondents have also withheld the benefits of 5th Pay Revision and 6th Pay Revision with effect from 1.1.1996 and 1.1.2006 and also the increments due upon them without any show cause or notice to the petitioner. Such withholding of the benefits of Pay Revision is wholly unwarranted in law neither covered by the impugned punishment also. The petitioner has also claimed for certain unpaid salary for the period of his suspension till his retirement. Counsel for the petitioner has relied upon 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, , which has been also affirmed by the Apex Court in the case of State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, .

4. On these grounds the petitioner has argued in support of his case.

5. Mr. A. Allam, learned Senior SC for the State has submitted that the charges against the petitioner were of serious nature and were enquired into during course of his service career in which he has been found guilty by the inquiring officer. Charge-sheet has been annexed as Annexure-A to the first counter affidavit. The report of the inquiry officer has also been annexed as Annexure-C to the counter affidavit in which charges of defalcation of Government money have been proved. It is submitted that the petitioner initially refused to accept the charge-sheet on the ground that he was in custody. After he came out from jail he was served with the said charge-sheet and on his prayer that a criminal proceeding is pending in the trial court, the departmental proceeding was kept in abeyance. However, he did not inform the respondent-authorities of his conviction by the trial court in the year 2006. After his retirement in January, 2008 on his acquittal in August, 2008, when it came to the notice of the respondents-authorities, thereafter, the Deputy Commissioner, Dumka after show cause notice and his reply has passed the impugned order. It is submitted that there was no requirement of initiation of a fresh departmental inquiry or for fresh order for continuance of the pending departmental inquiry in view of the Full Bench Judgment rendered by the Hon'ble Patna High Court in the case of Shambhu Saran Vs. The State of Bihar and Others, .

6. He further submits that the respondents after his retirement have imposed the punishment of withholding of pensionary dues as under the Civil Services Disciplinary Rules, no other punishment could have been in contemplation as the petitioner was No. longer in service. It is further submitted that the Deputy Commissioner, Dumka has issued the impugned punishment of withholding the pension and gratuity of the petitioner after obtaining the opinion of the Government Pleader that acquittal in criminal case will not have any effect as the charges in the departmental proceeding have been clearly established against the petitioner. It is submitted that the judgment rendered by the Full Bench of this Court in the case of Dr. Dudh Nath Pandey (supra) could not apply to the petitioner's case as in the said case the criminal proceeding was pending against the said employee while in the present case he has been acquitted by the criminal court.

7. The matter has been heard and the relevant records of the writ petition including the counter affidavit filed by the respondents have also been perused. The legal issue raised by the petitioner that no fresh departmental proceeding was initiated after his retirement for imposing such a punishment is not applicable in law in view of the Full Bench judgment rendered by the Patna High Court in the case of Dr. Dudh Nath Pandey (supra). It has been clearly held therein that if a departmental proceeding has been initiated during service career of an employee and he had retired in the meantime, the departmental proceeding may continue and no fresh order for initiation of such proceeding is required to be issued. The said point is, therefore, decided against the petitioner. However, so far as the second point raised by the petitioner is concerned relating to issuance of the impugned order by the Deputy Commissioner, Dumka, that it

is without jurisdiction, the following legal position emerges upon reading the provision of Rule 43(b). The provisions of the Rule 43(b) of the Jharkhand Pension Rules, which is also quoted hereinafter, indicates that it is the State Government which reserves to themselves the right of withholding or withdrawing a pension or any part of it or also for ordering the recovery of the same on account of any pecuniary loss caused to the Government in a departmental or judicial proceeding after pensioner is found to be guilty of grave misconduct or to have caused pecuniary loss to the Government by his misconduct or negligence. Proviso to the said Rule stipulates that the departmental proceeding has to be instituted after his retirement with the sanction of the State Government, which cannot be in respect of an event, which has taken place more than four years before the institution of such proceeding.

8. Rule 43(a) and (b) reads as under:--

"43(a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the petitioner is found in departmental or judicial proceeding to "have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that--

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;--

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause. (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders

are passed.

Explanation.--For the purposes of the rule--

"(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:--

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court."

9. From perusal of the aforesaid provision, it is clear that withholding of pension of a retired employee/pensioner can be imposed in the nature of punishment only by the State Government.

10. In the case of Lal Bihari Prasad Vs. State of Bihar and Others , the learned Single Judge of this Court has held that the Director-in-Chief, Health Services had no jurisdiction to pass an order imposing punishment of withholding of pension or gratuity against the pensioner as it was only the State Government that could have passed the said order.

11. In the case of Chhote Lal Prasad Sinha Vs. State of Jharkhand and Others , the Director, Health Services Bihar had also withheld the entire pension and gratuity, leave encashment and GPF of the pensioner permanently under Rule 43(b) of the Bihar Pension Rules. In the said case also it was held that he had no power of withholding pension of the employee after his retirement, as it was the State Government, which could have passed the said order. The matter was thereafter remanded to the respondents. Therefore, the impugned order appears to have been issued without jurisdiction by the Deputy Commissioner, Dumka.

12. The petitioner has made a categorical statement at para 27 in the writ petition that the Deputy Commissioner does not come within the meaning of State Government which is only authorized to impose punishment under Rule 43(b) of the Jharkhand Pension Rules.

13. The respondents at paras 18 and 19 of the first counter affidavit and para 25 of the second counter affidavit have not refuted the aforesaid statements rather supported the findings of the impugned order said to have been passed by the Deputy Commissioner after obtaining opinion from the Government Pleader.

14. It is, therefore, evident that the impugned order has been passed without jurisdiction and, therefore, cannot be sustained in the eye of law. The respondents also appear to have withheld the revisional benefits of salary of 5th Pay Revision and 6th Pay Revision but no such order has been passed neither the

impugned order of punishment is to that effect. Such an act on the part of the respondents, therefore, cannot be supported in the eye of law. The petitioner has been acquitted after his retirement by the learned Sessions Judge, Dumka, who has held that there was no iota of documentary evidence to fix the appellant with that liability under Section 409 IPC. It has further observed that the learned court below has committed serious illegality by placing the reliance upon the testimony of hearsay witnesses knowing the fact that no cogent and reliable evidence has been brought on record, which was mandatory to establish the charge under Section 409 IPC.

15. In the aforesaid circumstances, the respondents are obliged to release the benefits of revised salary of the petitioner under 5th Pay Revision and 6th Pay Revision w.e.f. the due date. However, the respondents are given liberty to take a fresh decision in the matter in accordance with law in respect of the same departmental proceeding after due compliance of the principle of natural justice. This writ petition is allowed in the aforesaid manner and the impugned order dated 15.7.2010 as contained in Annexure-3 is quashed.