
(2010) 07 JH CK 0013
In the Jharkhand High Court

Dineshwar Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Citation : (2010) 07 JH CK 0013

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Heard learned Counsel appearing for the petitioner and learned Counsel appearing for the State.

2. Learned Counsel appearing for the petitioner submits that the petitioner while was posted as Head Clerk in the Office of Superintendent of Police, Dhanbad, got retired on 31.01.1998. Thereafter when retiral dues were not paid, the petitioner filed writ application bearing W.P.(S) No. 2019 of 2002. Only then when order was passed by this Court, the retiral dues other than Pension and Gratuity were paid to the petitioner in full but so far Pension and Gratuity were concerned, the same under the order of the Court were paid to the extent of 90% only.

3. In course of time, when it came to know that the petitioner is entitled to Pension and Gratuity to the extent of 100%, in view of the Full Bench decision rendered in the case of Dr. Dudh Nath Pandey v. State of Jharkhand and Ors. reported in 2007 (4) J.C.R.1 (Jhr) (F.B.), an application was filed before the respondent No. 3 - Deputy Inspector General of Police, Coal Range, Bokaro, for according sanction for payment of Pension and Gratuity to the extent of 100%, but that prayer was refused on the ground that a criminal case lodged against the petitioner, for misappropriation of certain amounts, is still pending and as such, he is not entitled to get the Pension and Gratuity to the extent of 100%. That order has been challenged, in this writ application, to be bad.

4. Learned Counsel appearing for the petitioner, by referring to a decision

rendered in the case of Dr. Dudh Nath Pandey (supra), submits that even if the petitioner is facing criminal trial, that cannot be a ground for the said authority to withhold 10% of the Pension and Gratuity and as such the order passed by the respondent No. 3 - Deputy Inspector General of Police, Coal Range, Bokaro is illegal, unjustified and bad.

5. Having heard learned Counsel appearing for the parties, I do find substance in the submission advanced on behalf of the petitioner. It does appear that when a retiral dues were not paid to the petitioner, the petitioner preferred a writ application before this Court wherein this Court directed the authority to pay G.P.F., Group Insurance, etc. and at the same time, this Court also directed to pay Pension and Gratuity only to the extent of 90%. Subsequently, when the petitioner, by filing an application, asked the authority to pay rest of 10% of the Gratuity and Pension, the respondent No. 3 passed an order that the petitioner is not entitled to Pension and Gratuity to the extent of 100% as the criminal case, in which the petitioner is facing charge of misappropriation of huge amounts, is pending.

6. It be stated that though the order of this Court is there, observing therein that the petitioner is entitled to Pension and Gratuity to the extent of 90% but subsequently, the Full Bench of this Court in the case of Dr. Dudh Nath Pandey (supra) has been pleased to hold:

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 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 view of the proposition laid down by this Court, there remains no doubt that the petitioner is entitled to Pension and Gratuity to the extent of 100% even if, he is facing a criminal trial.

8. In that view of the matter, order under which it has been said that the petitioner is not entitled to Pension and Gratuity to the extent of 100%, is hereby, quashed. Accordingly, respondent No. 3 - Deputy Inspector General of Police, Coal Range, Bokaro is directed to take decision in this respect within a period of six weeks from the date of receipt/production of a copy of this order.

9. Hence, this writ application is allowed.