

(2009) 01 JH CK 0085

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3404 of 2008

Dineshwar Rai and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Bihar Pension Rules, 1950 — Rule 43(b)

Citation : (2009) 57 BLJR 906 : (2009) 1 JCR 626

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Advocate : S.N. Pathak, for the Appellant; S. Ranjan and Amit Sinha, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—The petitioners, six in number who retired after rendering the services in the department of Minor Irrigation and Water Resources, Tenughat Anchal, have filed this writ application to quash the orders dated 14.9.2007, 18.8.2007, 29.2.2008, 29.2.2008, 18.1.2007 and 16.4.2007 as contained in Annexures 1, 3, 4, 4A, 5 and 7 under which excess amount said to have been drawn by the petitioners have been sought to be recovered from the amount of their pension and gratuity.

2. The case of the petitioners is that all the petitioners except petitioner No. 3 were appointed initially as Junior Mechanic Grade II in the Department of Minor Irrigation and Water Resources at Tenughat Circle whereas petitioner No. 3 was appointed as an Assistant in the said Department. All of them were promoted to the higher post in the year 2004 without there being any misrepresentation on the part of the petitioners, and they started drawing salary in the scale of the post to which they were promoted but subsequently, in the year 2007 the impugned orders have been issued under which it has been shown that the petitioners have drawn money in excess and as such, those amounts have been sought to be recovered from the pension and gratuity of the petitioners. The

amount which has been sought to be recovered from the petitioners and also the date of appointment and the retirement are being given hereunder:

Date of Appointment

Date of Retirement

The amount sought to be Recovered

Petitioner No. 1-11.7.1969

31.8.2003

Rs. 1,11,389/-

Petitioner No. 2-10.7.1969

31.8.2003

Rs. 1,33,200/-

Petitioner No. 3-1.8.1969

31.7.2007

Rs. 1,80,881/-

Petitioner No. 4-1.2.1968

1.2.2008

Rs. 1,75,720/-

Petitioner No. 5-1.2.1968

1.2.2008

Rs. 1,82,281/-

Petitioner No. 6-1.2.1968

31.12.2006

Rs. 1,58,782/-

3. Learned Counsel appearing for the petitioners submits that all the petitioners were promoted to the promotional post without there being any misrepresentation on their part and as such any amount drawn by them cannot be recovered in view of the ratio laid down by the Hon''ble Supreme Court in a case of Sahib Ram Vs. State of Haryana and Others, . That apart the said amount can not be recovered from the gratuity and pension of the petitioners without resorting to the provision as contained under Rule 43(b) of the Bihar Pension Rules which proposition of law has been laid down by Full Bench of this Court in a case of Laxman Prasad Gupta v. State of Jharkhand and Anr. 2007 (4) JLJR 459 and hence the impugned orders under which amount said to have been

drawn by the petitioners in excess have been sought to be recovered are fit to be set aside.

4. A Counter affidavit has been filed on behalf of the respondents wherein it has been stated that though the petitioners were given promotions by different orders but arrears with effect from 15.11.2000 were never admissible still the petitioners drew their salaries in the promoted scale with effect from 15.11.2000 and therefore, the petitioners are liable to return the amount drawn in excess, particularly when there was stipulation in the orders granting promotions to the petitioners that in the event of any adverse order being passed relating to the promotions to the petitioners, the department can recover the amount drawn in excess by the petitioners and therefore, the impugned orders need no interference by this Court.

5. Having heard learned Counsel appearing for the parties and also going through the pleadings of the parties, it appears that it is never the case of the respondents that the petitioners by misrepresenting the fact got the orders of promotion in their favour or even drew the amount in excess, rather the authority seems to have allowed the petitioners to draw the salary and also the arrears of salary in the promoted scale and, therefore, the question does arise as to whether respondents are entitled to recover the amount said to have been drawn in excess from the pension and gratuity of the petitioners ?

6. Similar was the issue before the Full Bench of this Court in a case of Laxman Prasad Gupta v. State of Jharkhand and Anr. (supra) where question fell for consideration as to whether the amount, if any, paid in excess to the employees while in service due to mistake, fault or any misrepresentation can be recovered from the employee after retirement from the pension or gratuity of the Government employee ?

7. Their Lordship taking into consideration the number of cases including the case of Sahib Ram v. State of Haryana (supra) and also the provision as stipulated in Rule 43(b) of the Bihar Pension Rules held hereunder:

In the light of absence of any material to show that excess amount was received by the petitioner on misrepresentation, collusion, fraud or negligence, the said excess amount cannot be recovered out of the retiral dues after retirement, without following the procedure contemplated under Rule 43(b) of the Bihar Pension Rules. In this case the said procedure which is mandatory has not been followed. Therefore, action of the respondents for recovery of the amount from the retiral dues is not valid in law.

8. In the instant case also the authority without resorting to the provision as stipulated under Rule 43(b) of the Bihar Pension Rules has sought to recover the amount shown above from the petitioners from the amount of the pension and gratuity and as such, the said orders being illegal are hereby set aside. Consequently the amount, if any, deducted by the respondents from the amount of pension and gratuity and even from the amount of leave encashment of the

petitioners be paid to the petitioners forthwith.

9. Accordingly, this application is allowed.