
(2020) 05 JH CK 0074
In the Jharkhand High Court
Case No : Writ Petition(S).No. 4242 Of 2019

Guhi Ram Bauri

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 14-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 300A

Citation : (2020) 05 JH CK 0074

Hon'ble Judges : Dr. S. N. Pathak, J

Bench : Single Bench

Advocate : Sudarshan Shrivastava, Sunil Singh, Nipun Bakshi, Vijay Kant Dubey

Final Decision : Allowed

Judgement

Heard the parties.

Petitioner has approached this Court with a prayer for quashing the order dated 15.07.2019 (Annexure-14), whereby the representation of the petitioner for consideration of his case in view of earlier order passed by this Court, has been rejected without proper consideration of the facts. Petitioner has further prayed for a direction upon the respondents to pay the retiral dues i.e. gratuity, GPF, unutilized Earned Leave, etc.

3. The case of the petitioner lies in a narrow compass. The petitioner is the son-in-law and dependent of Shashi Bauri, whose land has been acquired by the State Govt. for setting-up of Bokaro Steel Ltd. After acquiring the land of Shashi Bauri, the Director, Project Land Rehabilitation, Marafari (Bokaro), after proper verification and enquiry, issued displaced certificate bearing DPLR Cert. Sl. No. 2786 dated 24.05.1973 in favour of Shashi Bauri. In the said certificate, the petitioner was shown as dependent of Shashi Bauri. On the basis of said certificate and on the basis of affidavit given by Shashi Bauri, the petitioner was given employment by Bokaro Steel Ltd. (for short "BSL") on 07.07.1980 to the post of Khalasi. Thereafter, he was promoted as Technical Operator in Water

Management Department of BSL. The petitioner had rendered more than 38 years of satisfactory services and thereafter, on attaining the age of superannuation, retired on 30.06.2019 from the post of Sr. Tech./ OPTV.

It is the case of the petitioner that during his service period, on 05.09.2007, respondent No. 2 issued letter to the petitioner mentioning therein that a complaint has been received against the petitioner with regard to his appointment and therefore, he was asked to submit all the documents in relation to petitioner being a displaced person. Pursuant to the said letter, petitioner filed an application before the respondent No. 2 along with photocopy of displaced certificate granted to her mother-in-law, Shashi Bauri, wherein the present petitioner was shown as her dependent. Thereafter, vide memo No. 3737 dated 21.02.2008, the petitioner was served with charge-sheet alleging therein that he had submitted false and fabricated displaced certificate for getting the employment in BSL. The petitioner submitted his reply wherein he had denied all the allegations levelled against him. Thereafter, petitioner came to know that displaced certificate issued to her mother-in-law Shashi Bauri has been cancelled that too without any show-cause notice or hearing. The petitioner represented before the respondent No. 2 vide his letter dated 02.06.2009, stating therein that Shashi Bauri while accepting/ adopting the present petitioner as son-in-law, had submitted an affidavit dated 17.11.1979 before the respondent No. 2 and on the basis of said affidavit and on the basis of displaced certificate, the petitioner was appointed by the respondent-BSL and as such, there is no misrepresentation on the part of the petitioner.

4. However, left with no option, the petitioner preferred W.P.(S). No. 3122 of 2009, with a prayer for quashing the letter dated 27.11.2008, issued by respondent No. 2, whereby the displaced certificate granted to the mother-in-law of petitioner has been cancelled, without providing opportunity of hearing. This Hon'ble Court, after hearing the parties, allowed that writ petition vide its order dated 10.04.2019 and quashed the impugned letter dated 27.11.2008 and further, remanded the matter back to the respondents for taking a fresh decision. Thereafter, the petitioner made a detailed representation dated 16.05.2019 before the respondent No. 2 for reconsideration of his case. Petitioner has also made representation dated 17.05.2019 before the Deputy General Manager, Water Management Department (works), SAIL, Bokaro for exonerating the petitioner from the pending departmental proceeding and for grant of promotion and consequential benefits as per his entitlement. Thereafter, vide letter dated 07.06.2019, the petitioner was asked to appear before the respondent-authorities on 11.06.2019 for presenting his case. In pursuant to the said letter, petitioner again submitted his case vide representation dated 11.06.2019 before the respondent-authorities and requested for reconsideration of his case.

In spite of the same, respondent No. 2, vide order dated 15.07.2019, rejected the claim of the petitioner on the ground of fresh inquiry and on the statement of son of Shashi Bauri, without considering the relevant records available with the

respondent-department.

Challenging the order dated 15.07.2019 and also the biasness shown by the respondents, petitioner has knocked the door of this Court.

5. Mr. Sudarshan Shrivastava, learned counsel appearing for the petitioner, submits that in view of the judicial pronouncements and catena of decisions of this Court, the respondents have no authority to withhold the amount of retiral benefits of an employee after his retirement in the garb of pending departmental proceeding. Learned counsel further argues that the respondents have erred in passing the impugned order inasmuch as the finding of the Hon'ble Court that Shashi Bauri is the land looser cannot be reviewed by the respondent in the impugned order. Learned counsel further argues that the respondents has no authority to continue with the long drawn pending departmental proceeding against the petitioner. Learned counsel further argues that the displaced certificate was issued to Shashi Bauri, after proper verification and enquiry and the present petitioner was shown as her dependent in the said certificate. Further, the said Shashi Bauri, in whose favour the displaced certificate was issued, has already died in between 1995-1996. Learned counsel further argues that after lapse of 38 years from the date of issuance of displaced certificate and after lapse of 12 years from the death of beneficiary Shashi Bauri, cancellation of said certificate is wholly unjustified and not sustainable in the eyes of law. Learned counsel further argues that after rendering more than 38 years of unblemished service career, the petitioner superannuated on 30.06.2019 and now, the respondents cannot withhold the legally payable retiral benefits to the petitioner without the authority of law.

6. Per contra, counter-affidavit has been filed. Learned counsel appearing for the respondents submits that petitioner had submitted forged and fabricated documents and on the strength of which, got employment in the BSL. Fraud and collusion vitiates even the most solemn proceedings. Misrepresentation itself amounts to fraud and fraudulent misrepresentation is called deceit and consists in leading of man into damage by willfully or recklessly causing him to believe and act on falsehood. It is fraud in law if a party makes representation which he knows to be false, as was observed in case of Ram Chandra Singh Vs. Savitri Devi & Ors. [(2004) 12 SCC 713]. As per the ratio laid down by the Hon'ble Apex Court, dishonesty should not be permitted to bear the fruit and benefits to those who have committed fraud or misrepresented themselves. In such circumstances, the Court should not perpetuate the fraud by entertaining petitions on their behalf. If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a Court of Law as the employment secured by fraud renders it voidable at the option of the employer. Learned counsel for the respondents submits that a complaint was received at the office of the Managing Director, BSL against the appointment of petitioner, which was found correct by DPLR, so it cannot be said that the entire service tenure of the petitioner was unblemished. Learned counsel accordingly submits

that there is no illegality in the impugned order and as such, the writ petition is fit to be dismissed.

7. Be that as it may, on a consideration of the facts and circumstances of the case as also the submissions made across the bar, this Court is of the considered opinion that the case of the petitioner needs consideration. Admittedly, fraud vitiates everything but it has to be looked into very carefully that who had committed the fraud. Whether petitioner can be held liable for the act which was not committed by him?

8. From the documents brought on record, it appears that the displaced certificate was issued in favour of Shashi Bauri in the year 1973 and it is only after lapse of 38 years from the date of issuance of displaced certificate and after lapse of 12 years from the date of death of the person in whose favour displaced certificate was issued, the dispute has arisen regarding genuineness of the said certificate. Petitioner continued in service for 38 years and superannuated on 30.06.2019. In his entire service career, the said certificate was accepted by the respondents to be true and genuine.

Law is well settled that after death of a person no dispute can be raised regarding genuineness of the certificate issued in his/ her favour and that also after lapse of 38 years of the issuance of the said certificate.

9. A complaint was made in the year 2008 and then departmental proceeding was initiated which is still pending. Petitioner superannuated in the month of June, 2019 and after his retirement, he is claiming post retiral benefits, i.e. gratuity, pension and leave encashment, which as per settled law and in view of catena of decisions of Hon'ble Apex Court, cannot be denied only because of the pending departmental proceeding. It also appears from the several documents regarding the proceedings that it remained pending for more than 10 years. The petitioner cannot be held guilty for the pending departmental proceeding. It is the respondents, who were responsible for not concluding the departmental proceeding. If the departmental enquiry is not completed for one decade, it is high time for the respondents to hold enquiry against those lethargic officers who caused hindrance in completing the departmental proceedings. If the same is conducted for unreasonably excessive period and without any justifiable reasons for delay, it causes serious prejudice to the delinquent.

10. The Hon'ble Apex Court in case of State of A.P. Vs. N. Radhakishan reported in (1998) 4 SCC 154, has held that:

"The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it.

..... Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

Further, in case of P.V. Mahadevan Vs. Md. T.N. Housing Board reported in (2005) 6 SCC 636, the Hon'ble Apex Court has held that,

".....no action has been taken against the appellant since 1990 for about 10 years; that no explanation whatsoever was offered by the Housing Board for the inordinate delay in initiating the disciplinary action against the appellant."

In case of State of Madhya Pradesh vs Bani Singh & Anr., reported in (1990) Suppl. SCC 738, the Hon'ble Apex Court has held as under:

"4. The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

In case of M.V. Bijlani Vs. Union of India & Ors., reported in (2006) 5 SCC 88, it has been held by the Hon'ble Apex Court that, "..... The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and it continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced to the delinquent officer".

11. In the present case also the enquiry continued for more than 10 years and petitioner was penalized after retirement on the basis of pending enquiry.

Admittedly, the enquiry suffers from the aforementioned vices, which cannot be sustained in the eyes of law.

12. Admittedly, in the instant case legality and propriety of certificate/ document

and its genuineness was questioned after 38 years of its issuance and 12 years after death of the person in whose favour the said certificate/ document was issued. The petitioner continued for more than 38 long years and the said certificate was accepted for all along the said period and never any dispute was arisen regarding genuineness of the same. It was only because of the delayed proceeding the petitioner has been made to suffer which is not sustainable in the eyes of law and the retiral benefits i.e. gratuity, pension and leave encashment etc. cannot be withheld.

13. Further, the Full Bench of this Hon'ble Court in case of Dr. Dudh Nath Pandey Vs. State of Jharkhand & Ors reported in [2007 (4) JCR 1 (Jhr) (FB)] has held as under: -

"25. Before we go into the legal sanctity of the circular, it must be remembered that the leave encashment is paid on account of unutilized leave and therefore, it partakes the character of salary. Pension is no longer considered as a bounty. The salary is a property given to the hands of the State which cannot be withheld except under the powers derived by a statute or law as contemplated under Article 300-A of the Constitution of India as laid down by the Supreme Court in AIR 1988 SC 1407, State of U.P. v. Haji Ismail Noor and AIR 2003 SC 3966, K.S.R.T.C. v. K.O. Varghese."

Further, this Hon'ble Court in case of State of Jharkhand & others Vs. Jitendra Kumar Srivastava & another reported in (2013) 12 SCC 210, dealing with the issue regarding payment of retiral benefits has held that:

"17. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of the aforesaid Article 300-A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different."

14. As a logical sequitur to the aforesaid observations, rules, guidelines and legal propositions, this Court is of the view that order 15.07.2019 (Annexure-14) is fit to be quashed and set aside and the same is hereby quashed. The respondents are directed to pay all the retiral benefits to the petitioner as per his entitlement, within a period of 12 weeks from the date of receipt/ production of a copy of this order.

15. With the aforesaid observations and directions, the writ petition stands allowed.

16. No order as to cost.