

(2009) 08 JH CK 0071
In the Jharkhand High Court

Indradeo Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Citation : (2009) 08 JH CK 0071

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard learned Counsel for the petitioner and Counsel for the respondent State.

2. The petitioner retired from service under the respondents on the post of Assistant Engineer, Planning and Investigation Division. Road Construction Department, Hazaribagh on 31st January 2003.

3. Despite superannuation and in spite of repeated demands when his retiral benefit, was not paid to him, the petitioner had filed a writ application before this Court vide W.P.(S) No. 4661 of 2004. While disposing of the writ application vide order dated 16.9.2004, this Court had directed the petitioner to file a fresh representation before the concerned authorities, specifying the details of his claim and a corresponding direction was issued to the concerned authorities of the respondents to pay the admitted dues to the petitioner within a period of four months from the date of receipt of the representation, failing which the respondents were made liable to pay interest @5% per annum from the date of retirement on total retiral benefits, till the date of payment.

4. The petitioner filed his representation on 27.10.2004. but despite lapse of the period of four months stipulated by the order in the earlier writ application, when payments were not forthcoming from the respondents, he filed contempt application.

In the contempt application, the respondents offered their replies stating that they had paid the entire admitted dues to the petitioner and upon such assertion,

the contempt petition was dropped, though with a liberty to the petitioner to file a fresh representation before the concerned authorities, if any further grievance does still survives even after payment of the retiral dues to him.

5. Claiming that interest, as stipulated by the court's earlier order on the delayed payments, was not given to him and also claiming that the amount of Rs. 18,900/- which was wrongly deducted from his retiral benefits, has not been refunded to him, the petitioner filed his representation before the concerned authorities. The respondents authorities after considering the representation, rejected the same by the impugned order (Annexure-12), stating that the issue relating to the petitioner's claim for payment of his retiral benefits was adequately answered in the earlier writ application as also in the contempt application, whereafter, the court had dropped the contempt petition and as such, no further claim of the petitioner does survive any more..

6. Challenging the aforesaid order (Annexure-12), the petitioner has filed the present writ application for issuance of a direction upon the respondents to calculate and pay interest on the delayed payments of the retiral dues and also to refund the erroneously deducted amount of Rs. 18,900/-.

7. Learned Counsel for the petitioner, by referring to Annexure-11 to the writ application, which is a letter issued by the Principal Secretary. Road Construction Department, State of Jharkhand dated 19.03.2005, submits that this letter indicates that the deduction of the sum of Rs. 18,900/- was made on the basis of the statement contained in the Last Pay Certificate issued to the petitioner. Explaining the matter, learned Counsel would refer to Annexure-14, which is yet another letter dated 4.6.2004 issued by the Executive Engineer, Road Construction Department, Dhanbad addressed to the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Department of Road. Construction Department, Bihar, Patna and explains that as would be evident from the aforesaid communication, the amount has been wrongly mentioned in the Last Pay Certificate as due, although the fact is that the then Executive Engineer namely, Krishna Kant Singh had obtained certain articles of the Department from the petitioner against receipt executed by the recipient which he had not returned. The petitioner had submitted the receipt along with all other particulars at the time of handing over charge of his office. The matter was considered by the Executive Engineer and a request was forwarded to the Special Secretary to direct the said Krishna Kant Singh to return the articles to the Department. Learned Counsel submits that apparently, the articles were neither in possession of the petitioner, nor should the petitioner be called upon to submit either the articles or the corresponding monetary value thereof and therefore, the deduction of Rs. 18,900/- from the petitioner's retiral benefits is totally illegal.

8. Learned Counsel for the respondents submits, on the other hand, that the entire retiral benefits have been paid to the petitioner pursuant to the orders passed in the earlier writ application. Some amount remained due which could

not be paid and for which the petitioner had hastily filed a contempt application, but during the pendency of the contempt application, balance of the admitted dues were also released and paid to the petitioner and at best, there was only a delay of six days and not more.

9. As regards the petitioner's demand for refund of Rs. 18,900/-, learned Counsel, while acknowledging the letter of the Principal Secretary (Annexure-11), submits that since the amount was deducted on the basis of the Last Pay Certificate, the matter was referred to the office of the Accountant General to verify and advise and in absence of any response from the office of the Accountant General, no decision on the petitioner's claim for refund of the amount could be taken as yet.

10. Learned Counsel for the petitioner however, disputes the claim of delay as raised by the respondent, by referring to the Chart annexed to the writ application which was supplied by the petitioner, wherein he has given the details of the various amounts paid to him on different dates. Learned Counsel for the petitioner on the other hand explained that from the chart, it would be manifest that the first payment of part amount was delayed by almost three months and likewise, the remaining payments have also been further delayed and the respondents are therefore liable to pay interest in terms of the order passed in the earlier writ application.

11. Counsel for the respondents however claims that although, the chart indicating dates of payment, are not denied, but interest cannot be paid on the basis of the claim made by the petitioner in as much as, the period has to be computed from the date when the petitioner submitted the requisite documents.

It is explained in the counter-affidavit of the respondents that though, the petitioner had filed his representation on 27.10.2004, but he had not filed the complete set of documents which were needed to assess his retiral benefits and such documents were furnished by the petitioner belatedly, some in the month of December 2004 and other in January 2005 and the period has to be calculated in terms of the order passed in the earlier writ application, from the date when the petitioner submitted the entire documents in the month of January 2005 and going by the said computation, there could be hardly six days of delay in making payment.

12. As it appears from the pleadings, admittedly, the petitioner's representation was received in the office of the respondents on 27.10.2004. From the copy of the representation (Annexure-2), it appears that he has filed his claim for payment of his retiral dues annexing a copy of the court's order passed in the earlier writ application.

As it appears, there was no response from the side of the respondents on the aforesaid representation within the time stipulated by the court's order in the earlier writ application.

Thereafter, the petitioner filed the second representation in December 2004 followed by another representation in January 2005, reiterating his demand on each occasion for payment of his retiral dues in compliance with the court's order.

13. Learned Counsel for the respondents has not pointed out any letter or communication made by the respondents to the petitioner after receipt of the first representation either denying his claim or assigning reason for delay in taking proper action on his representation.

It further appears that the first payment of Rs. 1,10,360/- was made to the petitioner on 16.5.2005 i.e. almost 2 and 1/2 months from the date of receipt of the petitioner's first representation. The second payment to the tune of Rs. 2,42,468/-, was made on 23.08.2005. The remaining payments were made lastly on 13.10.2006. It appears that the respondents have acknowledged their liability for payment of interest on the delayed payment of six days only, whereas the chart, even as admitted by the respondents, indicates that payments were made in installments and the first installment was paid after the delay of 2 and 1/2 months followed by further delay in making payment, till the date of final payment.

14. In the light of the above facts and circumstances, the petitioner is entitled to payment of interest as stipulated in the order passed in the earlier writ application, on the delayed payments, which, according to the facts and circumstances indicated above, ranges from 2 and 1/2 months to more than 2 years.

15. The respondents are therefore directed to compute the amount of interest payable on the interest payments to the petitioner @5% per annum, as directed in the orders passed in the earlier writ application and pay the same to the petitioner within a period of four weeks from the date of receipt/production of a copy of this order.

16. As regards the petitioner's claim for refund of Rs. 18,900/- it appears that the Last Pay Certificate was issued by the Department itself in which the amount has been sidelined and deducted. As it appears from the annexure-11 and 14, referred to by the petitioner, the petitioner was not liable to pay any such amount, nor was the amount liable to be deducted from the petitioner's retiral benefits. The respondents are therefore, directed to take an appropriate decision on the petitioner's claim for refund of the aforesaid amount within a period of one month from the date of this order and upon finding the petitioner's claim to be genuine, refund the same to the petitioner within the aforesaid period.

With the aforesaid observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondents.