
(2013) 03 JH CK 0070
In the Jharkhand High Court
Case No : WP (S) No. 5641 of 2008

Jagdish Sharma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Jharkhand Pension Rules, 2000 — Rule 43

Citation : (2013) 2 AJR 620 : (2013) 2 JLJR 432

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Manoj Kumar Choubey, for the Appellant; S. Choudhary, for the Respondent

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The writ petition has been preferred for quashing the impugned order contained in Letter No. 3191 dated 24th October, 2008 (Annexure-3) issued by the Additional Finance Commissioner, Government of Jharkhand, whereby Deputy Commissioner, Ranchi has been asked to stop the pension of the petitioner and also to recover the amount of pension paid to him with immediate effect. He has also sought quashing of the impugned order contained in Letter No. 1006 (ii) dated 7th November, 2008 (Annexure-4) issued by the Deputy Collector, Establishment, Ranchi to Treasury Officer, Ranchi, by which the Treasury Officer has been asked to stop the payment of pension to the petitioner and also to recover the amount of pension paid to him.

2. Learned counsel for the petitioner contends that after having retired on 31st May, 1998, he has been receiving his pension for the last 10 years, but the impugned orders have been passed apparently on the ground that the petitioner has been convicted in R.C. Case No. 43A/1996 by competent court in relation to the fodder scam case. Learned counsel further submits that the said orders have been issued in purported exercise of power under Sections 43(a) and (b) of

Jharkhand Pension Rules. 2000, but no notice or show cause has been issued to the petitioner before passing of the said orders. Learned counsel for the petitioner has brought on record a judgment and order passed in W.P.(S) No. 1656 of 2009 dated 11th November, 2009, to submit that in the said case also, when the pension of the concerned petitioner was stopped and recovery was directed to be made on his conviction in a fodder scam case, this court had quashed the order in question as the same were passed without giving opportunity to the said petitioner. It is submitted that the action of the respondents entails adverse consequences which requires opportunity of hearing before it is passed.

3. Learned counsel for the respondents however justified the impugned orders on the ground that by invoking the powers conferred u/s 43(b) of the Jharkhand Pension Rules, which permit the employer to stop/withdraw whole or part of the pension of the employee depending upon in future conduct, the petitioner has been imposed with the said order of stoppage of pension on his conviction in a criminal case relating to fodder scam by the competent court. Learned counsel for the respondents State however does not dispute the assertion of the petitioner that the same have been made without issuance of any show cause or notice. The relevant portion of the order dated 11.11.2009 passed in W.P.(S) No. 1655 of 2009 relied upon by the petitioner is quoted hereinbelow:--

The source of such power on part of the Government has been attributed in the counter-affidavit to Rule 43. The said Rule is reproduced in its entirety below, for ready reference:--

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 petitioner 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 pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have cause 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 Commissioner, 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.

It would appear from the said Rule that upon a conviction of an employee by a criminal court for a serious crime, the Government has multiple choices namely to withhold or not to withhold the pension, to withdraw or not withdraw the pension, to withhold or withdraw not the whole but the part of the pension.

When the authority concerned has multiple choices under the Rule and each of those choices is likely to adversely affect the employee in a different manner, and when the principles of natural justice are not expressly excluded by statute, the said principles would require an opportunity of hearing to be afforded to the employee concerned before the decision is taken causing an adverse affect upon the employee.

In the present case, no such opportunity has been afforded. The decision is vitiated on account of violation of principles of natural justice.

4. In the aforesaid facts and circumstances, therefore it appears that the orders of stoppage of pension and its recovery have been effected against the petitioner without any show cause or notice, though it entails adverse civil consequences. Principle of natural justice are therefore required to be observed before passing of an order. In that view of the matter, the impugned orders are quashed, however, leaving it open to the Government to take a fresh decision in accordance with law after giving due opportunity to the petitioner. With the aforesaid observations/directions, this writ petition stands disposed of.

Consequently, the I.A. No. 2687 of 2009 and I.A. No. 666 of 2013 are also disposed of.