
(2003) 03 JH CK 0031

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6072 of 2002

Jaiwanti Tidu

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 380

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : J. Dubey, for the Appellant; Ashutosh Choudhary, JC to GP-II, for the Respondent

Final Decision : Allowed

Judgement

Vikramadiya Prasad, J.—Heard both the sides.

2. The petitioner has come to this Court for grant of statutory and penal interest on the retiral dues as also arrear of the salary in the revised scale and interest thereon.

Paragraph 13 of the writ petition is relevant which reads as follows :--

"That from the revised final pension payment order received from the Accountant General dated 5.7.2002 the re-assessment of gratuity. Leave Encashment with arrear of pay and pension is the most outstanding problem that requires immediate attention and action of the Respondents/Authorities which have already been delayed so badly without any valid reason, particularly when more than seven years have elapsed since the retirement of the petitioner.

3. Consequently it has been averred in paragraph 14 of the writ application that payment of interest @ 5% per annum for the" period beyond three months on delayed payment of all kinds of pension (including Family Pension) and Death-cum-Retirement Gratuity is payable till the end of the month proceeding the

month in which the payment of final pension actually begins. Then the claim has been made for the interest on account of arrears of pay deposited under the Heading of General Provident Fund for long 30 years to the tune of Rs. 2,936.00 and released only during July 2002 deserves attention and statutory payment of interest accruing thereon needs rectification. It is also found that the arrear of salary of the petitioner for the period 1.1.1971 to 31.3.1973 was deposited as a policy in the General Provident Fund that amount was Rs. 2,936.00 and in July 2002 exactly the amount Rs. 2,936.00 was released to petitioner and no interest was given thereon.

4. So far the interest on that amount for the period 1971 to 1973 is concerned. under a Government decision it was deposited in GPF account thus the said amount became a part of the GPF itself and if that became a part of GPF itself then interest should accrue on that amount from the date of its being depositing under the head of GPF and consequently on that amount interest should also be paid @ on which it is payable on GPF deposits. So if this amount of arrears has been paid pure and simple without any interest, in my considered view, it is a financial loss caused to the petitioner, therefore the respondents are directed to calculate the interest which could have accrued to the petitioner on the GPF amount and pay the same to the petitioner with penal interest @ 12% per annum from the date of depositing of this arrear into the GPF account till the date of retirement.

5. So far the question of grant of arrear of salary in the revised scale, is concerned, the revised pay scale was fixed w.e.f 1.1.1996 and the petitioner retired on 31.1.1996 Clause-3 of the Government Resolution No. 3M-2-5-VE-PU-01/99-660/ (F/2) reads as follows :--

The revised scales of pay shall come into effect from 1st January, 1996. However, the actual payments in, the revised scales would arise with effect from 1st April, 1997. The revised scales of pay will apply to all Government employees who were in service on 1st January, 1996 and to all new appointments made on or after the said date, provided that in respect of the Government employees who were under suspension or on leave or were not on duty on 1st January, 1996, the revised pay scale will be applicable from the date of their return to duty. No arrears would be admissible for the period 1st January, 1996 to 31st March, 1997.

Another relevant clause of that Notification is Clause-9 which reads as follows :--

After Fixation of pay in the revised scale of pay from 1st January, 1996 from a subsequent date in case of Government servants on leave or under suspension or otherwise not on duty, the increments(s) due on and upto 31st March, 1997 shall be allowed and the first claim for actual payment in the revised scale would arise with effect from 1st April, 1997. No arrears would be admissible for the period between 1st January 1996 to 31st March, 1997. The arrears from 1st April, 1997 shall be payable in two equal instalment, after the adjustment of the amount already drawn. The bill for the first instalment of arrear may be drawn

immediately after fixation of pay in the revised scales. The second instalments of arrears shall be payable after the issuance of separate orders in this regard. However, those who have retired from service or are due to retire by 31st March, 1999 shall be paid all arrears in one lumpsum. However, if any Government servant is due for retirement before the issue of orders regarding the payment of second instalment. He/she will be paid the amount of second instalment in cash in the month of his/her retirement. In authorizing the payment of arrears Income Tax as payable may also be deducted and credited to Government in accordance with the instructions on the subject. The interim relief and Dearness Allowance sanctioned upto index average 1510 (1960-100) points and thereafter shall cease to be available with effect from 1st April, 1997 in the revised scales of pay. The existing Resolutions of Finance Department regarding the payment of dearness Allowance shall not be operative for the drawl of Dearness Allowance in the revised pay scales. The employees receiving their salary in the revised scales will have to contribute the minimum required percentage of basic pay to their General Provident Fund accounts at the existing rates with effect from 1st April, 1997 itself. The shortfall in the contribution actually made from pay upto and for the month February, 1999 shall be deducted from the arrears and credited to the General Provident Fund in one lumpsum. However, such deductions of GPF shall not be made from the arrears of the retired employees or those who are due to retire on or before 31st March, 1999.

6. On perusal of the Clause-3 aforesaid it is clear that no arrear could be admissible for the period 1.1.1996 to 31.1.1996 though under Clause-9 the salary fixed as on 1.1.1996 in the case of petitioner as she was in the service on 1.1.1996 shall be paid in the revised scale and be fixed w.e.f. 1.1.1996 but she does not appear to be entitled to any arrear of salary for the period 1.1.1996 to 31.1.1996 till she retired. Learned counsel for the petitioner relying on a decision reported in Bhupinder Kumar Sharma Vs. Bar Association, Pathankot, has submitted that since the petitioner has retired therefore the arrear of salary should be paid to the petitioner. I find myself in disagreement with the contention of the learned counsel for the petitioner when the resolution is quite clear that for the aforesaid period any arrear of salary is not admissible then the question of its payment does not arise. No distinction has been made in the aforesaid resolution for the better relief to the retired employees. Moreover when that arrear can not be given to the existing employee I do not understand why that can be given to a retired employee. The pension would be payable to the petitioner on the last pay drawn in revised pay scale and accordingly pension, gratuity, Leave Encashment are to be paid in term of revised scale.

7. Now according to the respondent the gratuity has been paid on 15.2.2002 and similarly unutilized leave has been paid on 15.1.2002 even the difference of salary has been paid.

8. In paragraph 5, Sub-section (6) of the counter affidavit filed by the respondent, the respondents have stated that the final pension of the petitioner

was fixed by the Accountant General by issuing PPO dated 5.7.2002 on revised pay scale and the same was fixed since 1.4.1997. In my opinion this is an erroneous fixation in the case of the petitioner this should be fixed in revised scale on 1.1.1996 and not from 1.4.1997 for the simple reason that the petitioner was not in service on 1.4.1997. It appears that the Accountant General had mislead itself by fixing the pension etc. w.e.f. 1.4.1997 misconstruing the provision of Clause-3.

9. Now the question that remains to be answered is whether the petitioner should get the penal interest on the ground that the pension etc. has been released after lapse of seven years. The pension relief to the petitioner can be divided into two parts first part depending upon unrevised pay scale and second part depending upon revised pay scale. If the revised pay scale itself was notified in the year 1999 and the petitioner superannuated in the year 1996 this was not known to the authority and therefore no interest can be claimed by the petitioner that it was not given as per the revised pay scale but even if in that scale if the pension has been released after the period of three years of retirement then the petitioner is entitled to statutory interest.

10. Since the new pay scale came in the year 1999 the pension, gratuity, leave encashment automatically stands revised soon thereafter but it took the respondents to decide this matter three years. Therefore the respondents are directed to pay penal interest on the revised pension, gratuity, leave encashment @ 12% per annum. The same will be applicable on GPF amount.

11. Writ is allowed at the admission stage itself.