

(2002) 05 JH CK 0057

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 136, 1511, 1521, 1853, 1915, 1968 and 2022/02

Jhabhu Pandit, Sidheshwar Pd. Sinha, Animesh Kr. Sinha and
Another, Shivanand Singh, Bhoop Narayan Jha, Gyanendra
Pd. Choudhary and Ram Narayan Singh

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Citation : (2002) 05 JH CK 0057

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Arvind Kumar Choudhary, Prem Prakash, Deepak Kumar Bharati, Rajendra Prasad, Nityanand Prasad Choudhary and Atanu Banerjee, for the Appellant; V.P. Singh, I. Sen Choudhary and Mukesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—All these cases relate to payment of retiral benefits of the employees of the State Electricity Board.

2. The petitioners retired from the services of the then Bihar State Electricity Board (State Electricity Board for short), prior to 1st April, 2001, except one. They having not paid the retiral benefits and other dues have moved before this Court.

3. The Jharkhand State Electricity Board (JSEB for short) and the present Bihar State Electricity Board (BSEB for short) are raising finger on one or other to suggest that the other authority is liable to pay.

4. WP (S) No. 1853 of 2002 was taken

up on 21st March, 2002, when both JSEB and BSEB raised finger on each other to suggest that the other party is liable to pay the benefit. The "Court while intended to hear and decide the issue made clear that the authority who will be

liable to pay GPF and GSS, will be also liable to pay penal interest, apart from statutory interest and heavy cost. It was not opposed by the counsel for the BSEB and JSEB.

5. The other cases being similar, were ordered to be placed along with WP (S) No. 1853/2002.

The counsel for the JSEB and BSEB stated that they may utilise the counter affidavits filed in WP (S) No. 1853 of 2002 in other cases as well for decision on question of law.

The main question arises as to who amongst JSEB and BSEB are liable to pay retiral benefits to the employees of the then State Electricity Board retired prior to cut off date i.e., prior to 1st April, 2001.

6. Individual cases of writ petitioners:--Jhabhu Pandit, petitioner of WP (S) No. 1853 of 2002 was in the services of the then State Electricity Board and retired on 30th April, 2000 as Trained Khalasi from Electric Supply Division. Deoghar. He having not paid the General Provident Fund (GPF) and amount towards Group Saving Scheme (GSS), preferred the writ petition for payment of the aforesaid dues with penal interest.

The Office of the executive Engineer. Electric Supply Division. Deoghar was under the control of General Manager-cum-Chief Engineer. Bhagalpur, Bhagalpur Electric Supply Area. Bhagalpur prior to reorganisation of the State Electricity Board. The Electrical Executive Engineer, Deoghar Electrical Circle. Deoghar has already sanctioned the GSS amount of Rs. 26,895/- vide order dated 28th July. 2000. The GPF amount of Rs. 1,48,182/- was also sanctioned by the General Manager-cum-Chief Engineer, Bhagalpur Electric Supply Area, Bhagalpur, vide order dated 22nd August. 2001 with intimation to the Electrical Executive, Engineer. Supply division, Deoghar to pay the amount.

In spite of aforesaid sanction orders, the petitioner Jhabhu Pandit has not been paid the aforesaid dues because of infighting between the JSEB and BSEB.

Sidheshwar Prasad Singh, petitioner of WP (S) No. 1511 of 2002, retired from the services of the State Electricity Board on 31st January, 1996 while posted as Accounts Assistant in the Office of Electrical Executive Engineer. Electric Supply Division, Kodarma. His retrial benefits were sanctioned in the unrevised scale of pay between 6th February. 1996 and 27th August, 1996. Subsequently. recommendation of pay Revision Committee was accepted and made applicable to the employees of the State Electricity Board. The Electrical Executive Engineer. Kodarma submitted Form "B" to the Controller of Finance. the then State Electricity Board. Patna on 11th December. 2000. He has preferred the writ petition for payment of pension. Gratuity and leave encashment in the revised scale, as allowed to the employees of the then State Electricity Board.

Animesh Kumar Singh and Parmanand Singh, petitioners of WP (S) No. 1521 of 2002, were Civil Foreman Grade I and Foreman Grade 1 respectively. Both of

them retired from Patratu Thermal Power Station, Hazaribagh (PTPS for short) on 31st May, 2000 and 30th June, 2001 respectively. They made grievance that the Respondents have not paid them the Pension, Gratuity and leave encashment in the revised scale, nor paid arrears of salary of certain period as mentioned at Paragraph "5" to their writ petition.

Shiva Nand Singh, petitioner of WP (S) No. 1915 of 2002 retired as Head Meter Tester on 31st January, 2000 from Electric Supply. MRT Subdivision, Deoghar. He having not paid pension, Gratuity and leave encashment in the revised scale,, as also GPF, GSS and arrears of pension, has preferred this writ petition. He stated that a sum of Rs. 94,915/-has been sanctioned for payment on account of Gratuity and pension in the revised scale with arrears of Rs. 1,10,593/-, but payment has not been made.

Bhoop Narayan Jha, petitioner of WP (S) No. 1968 of 2002 retired on 31st January, 2000 as Meter and Mechanic, Grade I from MRT Subdivision No. 1. Deoghar. He having not paid the GSS amount, leave encashment. Gratuity in the revised scale, total GPF, pension in the revised scale and arrears of pay, the pension revision having made effective/ applicable for the employees of then State Electricity Board, has preferred the writ petition.

He has stated that certain amount has been sanctioned towards GSS. vide Order No. 55 dated 8th February. 2000, towards leave encashment, vide order No. 43 dated 17th March, 2001, Gratuity vide Office Order No. 958 dated 9th August. 2001 and direction given for payment of revised pension, vide Memo No. 5068dated 26th November. 2001. Pension has been sanctioned vide Order No. 3294 dated 9th August, 2001, GPF sanctioned, vide Office Order No. 497 dated 26th September, 2001, but unfortunately, none of the amount so sanctioned has been paid to him.

Gyanendra Prasad Choudhary, petitioner of WP (S) No. 2022 of 2002 retired from the services on 31st January, 2001 while posted as Section Clerk in the Electric Supply Subdivision, Jamtara. He has stated that in spite of repeated representations made to the authorities including the General Manager-cum-Chief Engineer. Dumka Electric Supply Area, Dumka. he has not yet been paid the retrial benefits such as GPF, Gratuity, leave encashment, GSS etc., though sanction orders issued vide Order No. 53 dated 3rd April. 2001 for payment of leave encashment, vide Memo No. 389 dated 3rd August. 2001 for payment of Gratuity, vide Order No. 63 dated 10th May, 2001 for payment of GSS etc.

The case of Ram Narayan Singh.

petitioner of WP (S) No. 136 of 2002 is little bit different from others. In his case, the State Electricity Board, vide order contained in letter dated 3rd October. 2001 (Annexure-1) intimated that the petitioner was earlier given the benefit of 12% twice in the matter of pay fixation at the time of promotion. It is for the said reason, the provisional pension sanctioned, vide letter No. 1912 dated 11th September. 2001 and matter has been forwarded to the General

Manager-cum-Chief Engineer. Electric Supply Area. Ranchi. Only on removal of such anomaly, the case of the petitioner will be considered for finalisation of Pension/Gratuity,

In this background, the petitioner has challenged the order contained in letter dated 3rd October, 2001 issued by the Additional Secretary. State Electricity Board and further prayed for direction cm the Respondents to finalise his pension in the revised scale. taking into consideration the last pay drawn by him and also to pay the other dues, such as Gratuity, GSS, leave encashment, arrears of Pension from February. 2001 to August, 2001 etc.

7. Admittedly, all the petitioners were employees of the then Bihar State Electricity Board, Patna now referred as State Electricity Board. Except petitioner Parmanand Singh of WP (S) No. 1521 of 2002, the rest petitioners retired prior to 1st April, 2001.

8. The State of Jharkhand came into existence since 15th November, 2000, as per the Bihar Reorganisation Act, 2000 (Reorganisation Act. 2000 for short). In relation to Boards, Corporations etc. including State Electricity Board, provisions were made u/s 62 of the Reorganisation Act. 2000, relevant portions thereof, are shown hereunder:--

62. Provisions as to Bihar State Electricity Board, State, Warehousing Corporation and State Road Transport Corporation. (1) The following bodies corporate constituted for the existing State of Bihar, namely:--

(a) the State Electricity Board constituted under the Electricity (Supply) Act, 1948;

(b) x x

(c) x x

(2) Any directions issued by the Central Government under Sub-section (1) in respect of the Board or the Corporation shall include a direction that the Act under which the Board or the Corporation was constituted shall, in its application to the Board or Corporation, have effect subject to such exceptions and modifications as the Central Government thinks fit.

(3) The Board or the Corporation referred to in Sub-section (1) shall cease to function as from, and shall be deemed to be dissolved on such date as the Central Government, may, by order, appoint, and upon such dissolution, its assets, rights and liabilities shall be apportioned between the successor State of Bihar and Jharkhand in such manner as may be agreed upon between them within one year of the dissolution of the Board or the Corporation, as the case may be. or if no agreement is reached, in such manner as the Central Government may, by order, determine:--

Provided that x x Provided further that x x

(4) Nothing in the preceding provisions of this section shall be construed -as preventing the Government of the State of Bihar or, as the case may be, the Government of the State of Jharkhand from constituting, at any time on or after the appointed day, a State Electricity Board or a State Warehousing Corporation or a Road Transport Corporation for the State under the provisions of the Act relating to such Board or Corporation; and if such Board or Corporation is so constituted in either of the States before the dissolution of the Board or the Corporation referred to in Sub-section (1),--

(a) Provision may be made by order of the Central Government enabling the new Board or the new Corporation to take over from the existing Board or Corporation all or any of its undertakings, assets, rights and liabilities in that State, and

(b) upon the dissolution of the existing Board or Corporation,--

(i) any assets, rights and liabilities which would otherwise have passed to that State by or under the provisions of Sub-section (3) shall pass to the new Board or the new Corporation instead of to that State;

(ii) any employee who would otherwise have been transferred to or re-employed by that State under Sub-section (3), reach with Clause (i) of Sub-section (5), shall be transferred to or re-employed by the new Board or the new Corporation instead of to or by that State. (5) x x x x x

9. After Reorganisation of State (15th November. 2000), the Central Government never issued any notification under Sub-section (3) to Section 62 dissolving the then Bihar State Electricity Board.

10. The State of Jharkhand from its Water Resources & Energy Department. Ranchi issued Notification No. 26 dated 10th January, 2001 under Sub-section (4) to Section 62 of Reorganisation Act. 2000 constituting Jharkhand State Electricity Board (JSEB) w.e.f. 10th January, 2001. JSEB having constituted, a meeting held on 5th March. 2001 wherein officials of Government of India. Bihar and Government of Jharkhand discussed the modalities of division of assets and liabilities of the State Electricity Board as per Reorganisation Act, 2000. thereafter, the Government of Jharkhand from its Water Resources and Energy Department issued Notification No. 490 dated 16th March. 2001 as per the provisions of the Electric (Supply) Act, 1948 constituting a Board for JSEB showing therein the name of the Chairman and the Members. It followed by Notification No. 01 dated 20th March, 2001 issued by JSEB, Ranchi wherein exercising power u/s 62 of the Reorganisation Act. 2000. it was declared that those officers and employees working within the territorial jurisdiction of the State of Jharkhand will be provisionally treated as employees of JSEB w.e.f. 16th March, 2001 and final division of cadre will be taken on receipt of the detailed information. By subsequent Notification No. 02 dated 20th March. 2001, the JSEB exercised power u/s 62(4) taking over the movable and immovable assets w.e.f. 16th March, 2001 which are situated within the territory of the State of Jharkhand.

The Central Government thereafter issued an Order No. 42/9/2000--R & L dated 22nd March. 2001 recognising creation of JSEB by Government of Jharkhand under Sub-section (4) of Section 62 of the Reorganisation Act, 2000 and taking into consideration the decision taken in the meeting held on 5th March. 2001 exercised its power under Clause (a) of Sub-section (4) of Section 62 of the Reorganisation Act, 2000 in respect to provisional apportionment of assets and liabilities w.e.f. 1.4.2001, relevant portion of" which reads, as follows:--

"2. The assets, liabilities, rights and undertakings of the existing Board shall be allocated provisionally with effect from 1/4/2001 in the following manner:--

(i) Assets

(a) Fixed assets (land and buildings, installed plants and machinery, transmission and distribution systems, etc.) situated in the respective State will pass on to the respective SEBs as agreed between both the States on 5.3.2001.

(b) Movable assets and stores belonging to the field units will be transferred on the basis of location. Project/scheme-specific stores will be allocated to the concerned SEBs. Furniture and vehicles of the Head Office will be apportioned according to the year of purchase in the ratio of consumption of power.

(ii) Liabilities

Liabilities of the existing Board will be apportioned between the Boards of Jharkhand and Bihar in the ratio of consumption of power as agreed between the two States in the meeting of 5.3.2001."

11. As the assets and liabilities were provisionally apportioned w.e.f. 1.4.2001, JSEB. Ranchi issued Order No. 201 dated 19th September. 2001 with the following decision:--

JHARKHAND STATE ELECTRICITY BOARD: RANCHI Office Order No. 201/-, Ranchi, dt. the 19.9.01

It has been decided vide Board's Resolution No. 78 dated 10.9.2001 that payment of pension/gratuity. GPF final withdrawal and leave encashment in respect of employees of Jharkhand State Electricity Board who have retired after 31.3.2001 shall be made by JSEB on the basis of clearance obtained from Bihar State Electricity Board in each case.

Accounts Department shall ensure proper accounting in this regard so that in computing assets and liabilities this figure may reflect therein,

Sd/- (R.C. Prasad) Secretary."

The State of Bihar from its Department of Energy issued a letter communicated vide Memo No. 367 dated 1st October. 2001 referring Section 62(4) and Sections 52 and 53 of Reorganisation Act, 2000 intimated the Secretary, Energy Department, Government of Jharkhand, Ranchi that the officers and employees posted under JSEB, Ranchi who have retired, their retirement benefits such as Death-

cum-retrial Gratuity; GPF: Family Pension and other benefits such as arrears etc. should be made by the JSEB. It was also mentioned that those retired prior to 1.4.2001 from the State of Jharkhand, even in respect to them, the pension and other dues should be made by JSEB. Ranchi,

12. In view of aforesaid order issued by JSEB on 19th September, 2001 and letter issued by Government of Bihar on 1st October, 2001, the problem started as to who will pay the death-cum-retrial benefits and other dues to an employee of the then State Electricity Board retired prior to 1.4.2001.

It was brought to the notice of the Court that in reality the employees who were posted within the territory, which now falls within the successor State of Bihar, the territory of present BSEB. irrespective of cut off date, whether retired prior to or after 1st April, 2001, their retrial benefits and other dues are being paid by the present BSEB.

So far as officers and employees who were posted in the territory which now falls within the State of Jharkhand and under Control of JSEB, if retired after 1.4.2001. JSEB is paying the retrial benefits and other dues.

So far as the officers and employees such as most of the petitioners of the writ petitions at hand, who were posted within the territory which now fall within the State of Jharkhand, now under the control of JSEB, if retired prior to 1.4.2001 but not paid the retrial benefits, the dispute has been raised. However, in respect to those who retired prior to 1.4.200] from the territory of the State of Jharkhand, but in whose cases retrial benefits were sanctioned and paid, the JSEB is paying their monthly pensions and not the present BSEB.

13. From the facts aforesaid, it will be evident that the JSEB was created on 10th January, 2001, i.e. the date the erstwhile State Electricity Board stood bifurcated. The date 1st April. 2001 has no nexus except that

the provisional apportionment of assets and liabilities made by Central Government under the Reorganisation Act. 2000. It has nothing to do with payment of death-cum-retrial benefits to an employee retired prior or after the 1st April, 2001.

14. The question arises as to who will pay the retrial benefits and other dues to an employee of State Electricity Board if retired prior to 1st April, 2001? The answer will be "Competent Authority". To find out the "Competent Authority", it is necessary to discuss the rules/guidelines delegating such power, as detailed hereunder--

The then State Electricity Board, prior to its bifurcation issued Office Order No. XVIII/Misc. 571/2000/4123/Patna, Dated 17.7.2000. delegating financial and administrative Powers to the Officers of the Board, as quoted hereunder:--

"BIHAR STATE ELECTRICITY BOARD

PATNA DEPARTMENT OF GENERAL ADMINISTRATION

Office Order No. XVIII/Misc. 571/ 2000/4123/Patna, Dated 17.7.2000

Sub:--Delegation of Financial Powers to the Officers of the Bihar State Electricity Board.

In supersession of all previous orders of the subject, the Bihar State Electricity Board has by its Resolution No. 7643 delegated Financial Powers to the officers of the Board as given in the enclosed statement.

2. These delegations shall form part of the Board's Financial and Accounts Code Chapters-I-III as Appendix-V.

3. These delegations shall come into force from the date of issue of this order.

By order of the Bihar State Electricity Board Sd/- (S.K. Singh) Secretary"

"Power delegated

Sl. No.	Nature of Power	To whom delegated	Extent of delegation	Condition	Remark
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1	2	3	4	5	6
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50. (i)

Sanction of group saving Scheme of officers & workmen posted in

Concerned Joint Secy. Full Power

(ii)

Sanction of group saving scheme of field cadre staff & officers posted in area office/project.

GM/GM-cum-CE Full power

(iii)

Sanction of group saving scheme of officers & staff of circle unit including divisions

E.S.E. Full Power

(iv)

Sanction of group saving scheme of staff posted upto Divn. level.

E.E.E. Full Power

(v)

Sanction of leave encashment of unutilised amount of leave of officers & workmen of apex Board.

Concerned J.S. Full power

(vi)

Sanction of leave encashment of unutilised amount of leave of filed cadre staff posted in area office/project

GM/GM-cum-CE Full power

(vii)

Sanction of leave encashment of unutilised amount of leave of staff (field cadre) of circle unit

E.S.E. Full power

(viii)

Sanction of leave encashment of unutilised amount of leave of staff of field cadre posted upto division level

E.E.E. Full power

(ix)

Sanction of pension, gratuity and commutation of pension of all officers of the Board

Secretary Full power

(x)

Sanction of pension & gratuity to the workmen of central cadre either posted in Apex Board or in the field offices

Concerned J.S. Full power

(xi)

Sanction of pension and gratuity to the workman of all field cadres/project cadre

GW/GM-cum-CE Full power

(xii)

Regularisation of period either spent as waiting for posting of final pasting after re-instatement either posted in apex Board or in the field offices with regard to central cadre

Concerned Jt. Secy. Full power

The sanction order in respect to Bhoop Narayan Jha has been issued by G.M.-cum-Chief Engineer, Bhagalpur on 9th August, 2001 with intimation to A.O., Deoghar Electric Circle, Deoghar to release payment.

Similarly, in the case of Gyanendra Prasad Choudhary, though he retired prior to 1st April, 2001, the Electrical Executive Engineer, Dumka being the competent

authority, sanctioned GSS amount, vide Memo No. 63 dated 10th May. 2001 and leave encashment sanctioned by the same authority, vide Memo No. 53 dated 3rd April. 2001.

In the case of Ram Narayan Singh, the Additional Secretary of the present JSEB. vide letter dated 3rd October, 2001 had stated that the records etc. have been sent to the GM-cum-Chief Engineer. Electric Supply Area, Ranchi for appropriate rectification of mistakes, though said Ram Narayan Singh retired prior to 1st April, 2001, appropriate order relating to Pension and Gratuity issued by the Deputy Director of Accounts, Ranchi Electric Supply Area. Ranchi, vide Memo No. 7050 dated 9th October, 2001.

18. The counsel for the JSEB and BSEB referred to one or other orders passed by the Jharkhand High Court or Patna High Court for payment of retrial benefits.

Reliance has been placed on order passed by the Jharkhand High Court on 15th March. 2002 in WP (S) No. 1760 of 2002: see 2002 (2) JCR 191 (Jhr), order dated 22nd January, 2002 passed in WP (S) No. 607 of 2002; order dated 20th February, 2002 passed in WP (S) No. 1301 of 2002: order dated 22nd January. 2002 passed in WP (S) No. 619 of 2002; order dated 2nd January, 2002 in WP (S) No. 6106 of 2001; and a detailed order passed on 2nd April, 2002 in WP (S) No. 4856 of 2001 : see 2002 (2) JCR 173 (Jhr). The order of Patna High Court which was brought on record is the order dated 10th April, 2002 passed in CWJC No. 15520 of 2001. However, it is not necessary to discuss aforesaid orders passed by Jharkhand High Court or Patna High Court, as the issue as to which authority is liable to pay retrial benefits has not been decided in those cases, but on the basis of stand taken by one or other parties, certain directions have been issued for payment of retrial benefits.

19. It is not in dispute that the question of payment of retrial benefits to one or other employee cannot await final apportionment of assets and liabilities of the then State Electricity Board between the JSEB and BSEB Competent authorities are to sanction and pay the admitted retrial benefits.

20. Thus, it can be safely stated that the authority who was delegated with the financial and administrative power to sanction and pay the retrial benefits is the competent authority and continues with such power even after creation of JSEB for all such purpose. If it is the concerned G.M.-cum-Chief Engineer or Electrical Superintending Engineer or Electrical Executive Engineer who was delegated with such power, the said authority being the competent authority is to pay the retrial benefits to the employees who were posted under the jurisdiction irrespective of any cut off date and cannot deny it on the ground of final non-apportionment of assets and liabilities.

Similarly, if the financial and administrative power was delegated to the Secretary or the concerned Joint Secretary of the then State Electricity Board, such power continues with the Secretary/Joint Secretary of the successor Boards ie. JSEB and BSEB in respect to persons who were posted within their territorial

jurisdiction.

For example, if a person retired from a post which now falls within the jurisdiction of the State of Jharkhand, the concerned Secretary/Joint Secretary of the JSEB will continue to have financial and administrative power, as also the responsibility and liability to pay, continue to pay the retrial benefits.

Similarly, if the employees retired from a place which now falls within the successor State of Bihar, the Secretary of the present BSEB will be liable to ensure payment.

21. In these cases, as all the petitioners retired from the places which now fall within the State of Jharkhand and their competent authority to sanction being the General Manager-cum-Chief Engineer or Electrical Superintending Engineer or Electrical Executive Engineer of the concerned place, those officers are liable to receive the retrial benefits, though the competent authorities of JSEB irrespective of the cut off date.

22. So far as Ram Narayan Singh, petitioner of WP (S) No. 136 of 2002 is concerned, in his case, nothing specific having stated relating to so called wrong fixation of pay made in connection with one or other promotion, he having retired from service on 31st January, 2001 and no misrepresentation having alleged against him, the order communicated vide letter dated 3rd August, 2001 enclosed as Annexure-1 to his writ petition, is set aside.

23. The competent authorities of all the writ petitions i.e. the concerned GM-cum-Chief Engineer, including the General Manager-cum-Chief Engineer, Dumka in place of Bhagalpur; concerned Electrical Superintending Engineer and Electrical Executive Engineer under who one or other petitioner was posted, are directed to release payment of admitted retrial and other benefits, as prayed for by one or other petitioner within six weeks from the date of receipt/production of a copy of this order, failing which the Respondents will pay 8% interest on admitted dues, apart from the statutory interest from the date of retirement. They cannot deny the benefits on the ground that the petitioners were not the employees of JSEB.

24. There being specific order passed by this Court on 21st March, 2002 in the case of Jhabhu Pandit in WP (S) No. 1853 of 2002, a cost of Rs. 10,000/- (Rs. ten thousand) is imposed on JSEB for payment in favour of petitioner Jhabhu Pandit to be paid within the aforesaid period of six weeks.

25. All the writ petitions are allowed with the aforesaid observations and directions.