
(2013) 08 JH CK 0018
In the Jharkhand High Court
Case No : WP (S) No. 6413 of 2011

Lawlesh Sharma

APPELLANT

Vs

The Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2013) 4 JLJR 218

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Yogesh Modi, for the Appellant; Rajan Raj for JSEB, for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner, in the instant case, is a retired employee of the Jharkhand State Electricity Board. He was working as Account Assistant. The grievance of the petitioner to move the present writ application is the order dated 13th March, 2008 issued by Director Personnel vide Annexure-2 contained in Memo No. 479 by which 10% pension, entire amount of gratuity and leave encashment have been withheld. However, the further grievance of the petitioner is on account of letter dated 23rd June, 2010 issued by the Director of Accounts, whereunder a sum of Rs. 1,38,670.70 has been deducted from the gratuity of the petitioner vide Annexure-9.

2. The petitioner had earlier moved this Court in W.P. (S) No. 6274 of 2006, for seeking a direction upon the respondents to pay all retiral dues after he had retired on 31st December, 2005, while working as Account Assistant in Jharkhand State Electricity Board. During the pendency of the said writ application, the amount of G.P.F. to the tune of Rs. 4,40,170.10 and certain amount towards G.S.S. had been paid to the petitioner, but other retiral benefits such as leave encashment, gratuity and 10% pension had not been paid to the petitioner. In such circumstances, the writ petition was disposed of with liberty to the petitioner to approach the competent authority with fresh representation who, in

turn, was directed to pass an order in accordance with law within the stipulated period vide judgment dated 29th June, 2007 (Annexure-1). Thereafter, the impugned order was passed on 13th March, 2008. The order dated 27th December, 2008 was also passed by the Director Personnel, in the nature of punishment for withholding 10% pension and also for recovery of loss of revenue of a sum of Rs. 1,38,670.70 from the gratuity amount payable to the petitioner.

3. The petitioner thereafter was again asked to show cause against the proposed punishment vide Annexure-4 dated 18th February, 2009, which he replied vide Annexure-5 and thereafter the order for deduction of the amount of Rs. 1,38,670.70 from his outstanding gratuity amount was passed vide Annexure-9 dated 23rd June, 2010 which is also impugned herein.

4. The impugned order has been assailed on behalf of the petitioner on the ground that the same was passed after his retirement without following the provisions of Rule 43(b) of the Jharkhand Pension Rules and in a manner which is not contemplated under Rule 139 of the said Rules.

5. It is the contention of the petitioner that for certain alleged charges for the period of his posting between April, 1988 to April, 1992, he was issued show cause on 9th December, 1997 by the Joint Secretary of the Respondents-Board. The petitioner is said to have furnished his reply on 4th May, 1998. After his reply the communication dated 22nd November, 2002 was sent by the Joint Secretary of the Bihar State Electricity Board to the counter part Jharkhand State Electricity Board to take a decision in the matter. In such circumstances, another show cause was issued on 1st September, 2003 upon the petitioner asking for his reply. Thereafter, certain correspondences were exchanged between the officials of the respondents. The petitioner, in the meantime, retired on 31st December, 2005. It is contended on behalf of the petitioner that no charge-sheet or any departmental proceeding was initiated against him during the service period and even after his retirement. No such proceeding under Rule 43(b) of the Rules could have been initiated for alleged charges for the period 1988 to 1992 as it was much beyond four years period as contemplated under the proviso a(ii) of Rule 43(b) of Jharkhand Pension Rules.

6. The petitioner, therefore, has assailed the impugned order by which the deduction in his pension has been made as also the amount of Rs. 1,38,670.70 has been recovered from his outstanding gratuity amount due.

7. Learned counsel for the petitioner has relied upon the judgment rendered by Hon"ble Supreme Court in the case of State of Bihar and others Vs. Mohd. Idris Ansari, thereof. It is submitted on behalf of the learned counsel for the petitioner that during the service career of the petitioner neither any departmental proceeding was initiated by issuance of a charge-sheet nor such proceeding could have been done after his retirement under the relevant provisions of Rule 43(b) of the Rules as the alleged charges related to the period much beyond four years from his retirement that too of the year 1988 to 1992. In such circumstances,

the powers conferred under Rule 139 of the Rules could not have also been exercised on the same allegations without any definite finding of guilt for the alleged misconduct on the charges for which he was issued only show cause during the service period.

8. Learned counsel for the Respondents-Board, on the other hand, has supported the impugned order. It is contended on behalf of the counsel for the Respondents-Board that the order has been passed invoking the Rule 139 of the Rules under which it is permissible for the Sanctioning Authority to reduce the pension of the petitioner employee, if his services are found to be unsatisfactory.

9. In the instant case, according to the learned counsel for the respondents, the petitioner was already issued show cause and had submitted his explanation which was found to be unsatisfactory, as the Board had been caused loss of revenue for his alleged acts of misconduct. In such circumstances, the impugned order has been passed withholding 10% pension and recovery of certain amounts from his outstanding gratuity.

10. I have heard learned counsel for the parties at some length and gone through the materials on record including the impugned order. It is not in dispute that the impugned order by which deduction of 10% pension of the petitioner has been made as also recovery of a sum of Rs. 1,38,670.70 has been passed, is in relation to alleged charge, which related to the period 1988 to 1992. From the entire pleadings on record at no such place, it is made out that the departmental proceeding was initiated by issuance of charge-sheet against the petitioner during his service career. The best case of the respondents as would appear from the pleadings and the documents on record is that the petitioner was issued show cause notice on 9th December, 1997 for the alleged charges. Thereafter again he was served with another show cause notice on 1st September, 2003 by counter part authority of Bihar State Electricity Board i.e. Jharkhand State Electricity Board which he replied. However, without any order being passed upon his show cause or initiation of any departmental proceeding which commences upon issuance for proper charge-sheet in a prescribed format, the petitioner superannuated on 31st December, 2005. It is settled position of law that a departmental proceeding is said to have been initiated upon issuance of a charge-sheet. In the instant case as has been found, no such charge-sheet was issued upon the petitioner. The affidavit of the Respondents-Board, also does not refer to any issuance of charge-sheet or conduct of any departmental proceeding during the service career.

11. The second eventuality could have been issuance of a proceeding under Rule 43(b) of the Rules for certain alleged charges which was said to have been made against the petitioner for an event during his service career. This again could have been issued for an event which was within four years period of the issuance of such proceeding under the provisions of Rule 43(b) of the Jharkhand Pension Rules, which are also applicable in the State of Bihar after being adopted by the State of Jharkhand and are also applicable in the Jharkhand State Electricity

Board. The legal position in that respect are no longer in dispute as have been rendered by the judgments of the High Court as also settled by Hon"ble Supreme Court in a number of judgments.

12. From perusal of the order dated 27th December, 2008 (Annexure-3), it is obvious that they are in the nature of a finding of guilt of misconduct against the petitioner for eight alleged charges for the period 1988 to 1992. It is obvious that neither any departmental proceeding was initiated under which the said charges were established nor any proceeding under Rule 43(b) of the Rules was also initiated after his retirement. It has already been observed that for an event which related to the period 1988 to 1992, in any case after retirement of the petitioner, no such proceeding could have been initiated invoking Rule 43(b) as the said event was much beyond 4 years period contemplated under the proviso a(ii) Rule 43(b) of Jharkhand Pension Rules. The judgment relied upon by the petitioner in the case of State of Bihar and others Vs. Mohd. Idris Ansari, thereof, are illustrative on this account and they are being reproduced hereunder for better appreciation:

Para 9: So far as that rule is concerned, it empowers the State authorities to decide the question whether full pension should be allowed to a retired Government servant or not in the circumstances contemplated by the Rule. The first circumstance is that if the service of the concerned Government servant is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second circumstance is that if it is found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of concerned Government servant while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139, under the aforesaid circumstances, is further hedged by two conditions. First condition is that revisional power has to be exercised in consonance with the principles of natural justice and secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time. A conjoint reading of Rule 43(b) and Rule 139 projects the following picture:

I. A retired Government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.

II. Even if the service record of the concerned officer is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the concerned officer during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period.

Para 10: So far as the second type of cases is concerned the proof of grave misconduct on the part of the concerned Government servant during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently, a retired Government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement. but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent retired on 31.1.1993 and the show cause notice was issued on the ground of grave misconduct on 27.9.1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore, to be read with Rule 43(b). Such notice, therefore, could cover any misconduct if committed within 4 years prior to 27.9.1993 meaning thereby it should have been committed during the period from 26.9.1989 up to 31.1.1993 when respondent retired. Only in case of such a misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings, if he was found guilty of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27.9.1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which show cause notice dated 27.9.1993 was issued, the appellate authority had not power to invoke Rule 139(a) and (b) against the respondent. on the ground of proved misconduct- Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13.12.1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after expiry of four years from 1986-87 as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the show cause notice dated 27.9.1993 will have to be treated as still born and ineffective from its inception. Such a notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this appeal. In the result appeal fails and is dismissed. There is no order as to costs.

13. It is not the case of the respondent that the order in question has been passed by the Revisional Authority under Rule 139(c) of the Jharkhand Pension Rules. The counsel for the respondent has sought to justify the impugned order under the provisions of Rule 139(b) of the Rules, under which the Sanctioning Authority can make reduction in the amount of pension, if it is found that the services of the petitioner is not thoroughly satisfactory.

14. In the instant case, the findings which have been rendered in the order dated 27th December, 2008 which are precursor to the notice issued upon the petitioner on 18th February, 2009 before issuance of the impugned order dated 23rd June, 2010 vide Annexure-9 by Director of Accounts, are apparently in the nature of findings on the guilt of the petitioner on the alleged charges of misconduct for the period 1988 to 1992. In such a circumstance, the exercise of powers under Rule 139(b) of the Rules, could have proceeded apparently, if the misconduct had been established during the course of properly constituted departmental proceeding in his service career or initiated under Rule 43(b) of the Jharkhand Pension Rules. Both are absent in the present case. The findings are of guilt on the alleged misconduct against the petitioner. In such circumstances, therefore, the opinion of Hon'ble Supreme Court which are referred to hereinabove, come to aid of the petitioner as the impugned order has been passed, without any establishment of guilt of misconduct either in a departmental proceeding or in a proceeding under Rule 43(b) of the Rules before powers under Rule 139(a) and (b) of the Rules could have exercised. As already indicated hereinabove the alleged charges of misconduct related to a period 1988 to 1992 i.e. much before the retirement of the petitioner on 31st December, 2005 for which the proceedings under Rule 43(b) of the Jharkhand Pension Rules could not have initiated after his retirement and that too in the year 2008 or 2009.

15. In the totality of the facts and circumstances, therefore, which have been discussed hereinabove, the impugned order by which the amount of 10% of the petitioner's pension has been withheld permanently and the order for recovery of an amount of Rs. 1,38,670.70 from his total outstanding gratuity amount payable, cannot be sustained in law as well as on facts and accordingly the impugned orders being unsustainable in law as well as on facts, are quashed. The writ petition is accordingly allowed. Consequently, the petitioner would be entitled to refund of the deducted amount as also for release of balance of the pension amount withheld, within a period of 8 weeks from the date of receipt/production of a copy of this order.