

(2021) 02 JH CK 0151
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1673 Of 2019

Mahendra Narayan Singh

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2021) 02 JH CK 0151

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Swati Shalini, Rishu Ranjan, Diwakar Upadhyay, Ashish Kumar Thakur

Final Decision : Allowed

Judgement

1. Heard Mrs. Swati Shalini, learned counsel for the petitioner, Mr. Rishu Ranjan, learned counsel for the respondent-State of Jharkhand, Mr.

Diwakar Upadhyay, learned counsel for the respondent-State of Bihar and Mr. Ashish Kumar Thakur, learned counsel for respondent no.10.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising

due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard on merit.

3. The petitioner has preferred this writ petition for quashing the letter dated 05.03.2019, contained in Annexure-13 of the writ petition. During the

pendency of the writ petition, the petitioner has filed I.A. No.2508 of 2020 for amendment in the prayer portion of the writ petition, whereby, such

prayer was allowed, which was incorporated by the petitioner in red ink in the writ petition. By way of amendment, the order dated 20.02.2020 passed

by the Superintending Engineer, Waterways Circle, Hazaribag, contained in Annexure-15 of the supplementary affidavit filed by the petitioner, was

challenged by the petitioner by which a sum of Rs.11,78,500/- was directed to be recovered from the pensionary benefits of the petitioner. The

prayers for fixation of pension and release of pensionary and retiral benefits of the petitioner have also been made pursuant to the said I.A.

4. The petitioner joined on the post of Junior Engineer under the Minor Water Resources Department, erstwhile State of Bihar. The petitioner has

been transferred to several places during his entire service period where he has served the respondents to their utmost satisfaction. The Government

initiated National Rural Employment Programme (NREP) with a view to significantly increase employment opportunities in rural area. The Deputy

Development Commissioner vide its order dated 13.03.2002 sent the service of the petitioner in Abhigaon Block for successful implementation and

execution of work under the NREP. The petitioner joined there. After bifurcation of the State of Bihar, the service of the petitioner was allocated to

the cadre of the State of Jharkhand in the year 2004. The Assistant Engineer, Minor Irrigation Division, Arrah vide its office order dated 11.09.2004

relieved the petitioner to submit his joining in the State of Jharkhand and directed him to handover his complete charge to one Krishna Mohan Gupta,

Junior Engineer, who has refused to accept the charge from the petitioner as the petitioner was holding an additional post under deputation. After

allocation of the cadre, the petitioner joined the service in the State of Jharkhand and he was posted at Waterways Division, Hazaribag. After joining

in the State of Jharkhand, the petitioner was not being paid salary, which compelled him to move before this Court in W.P. (S) No. 5715 of 2009,

which was disposed of vide order dated 10.10.2018 with direction to the respondents to decide the representation of the petitioner with regard to

issuance of Last Pay Certificate (LPC) and, thereafter, the petitioner's salary has been started and the petitioner has received the salary. The

Executive Engineer, Minor Irrigation Division, Arrah vide letter dated 26.06.2007 directed the Assistant Engineer, Minor Irrigation Subdivision, Arrah

to issue no dues certificate of the petitioner in absence of which his service book and LPC are not being issued. A letter dated 08.05.2009 was issued,

whereby, it has been intimated that the petitioner received an advance of Rs.43,51,900/- for 35 plans that were registered in the year 2003-04, out of

which, the estimated cost of 26 plans was Rs.38,06,600/- against which bills amounting to Rs.37,70,038/- has been adjusted. The petitioner submitted an account of Rs.9,37,800/- for the remaining 8 plans, which were mentioned in the measurement book and passed by the Assistant Engineer, which has not been adjusted and one plan involving construction of the room at primary school has not been completed for want of advance. The petitioner got an advance of Rs.43,51,900/- for the implementation of 35 schemes for which he submitted a bill of Rs.37,70,038/- which was adjusted for 26 plans after which an advance of Rs.5,81,862/- remained with the petitioner. The petitioner submitted a bill of Rs.9,37,800/- for remaining 8 plans which has not been adjusted till date. The respondents adjusted the bill of Rs.9,37,800/- for the 8 plans mentioned in the measurement book.

5. Mrs. Swati Shalini, learned counsel for the petitioner assailed the impugned orders on the ground that there is no due on the part of the petitioner.

She submits that the petitioner is entitled for payment of Rs.3,35,938/-, whereas, the respondents have arbitrarily demanded Rs.11,78,500/- from the

petitioner. She further submits that there is no material on the record to suggest that the amount is still due with the petitioner. She refers to the

impugned order dated 05.03.2019, contained in Annexure-13 of the writ petition and submits that in paragraphs 5 and 9 of the impugned order, it has

been disclosed that no material is available with regard to adjustment of such due on the part of the petitioner. She also submits that in the said

impugned order, several attempts were made by the authority concerned for procuring the document, but nothing has been provided and in spite of that

recovery order has been passed and the retiral benefits of petitioner including the pension are not paid to the petitioner and that is why the petitioner is

compelled to move before this Court.

6. Mr. Rishu Ranjan, learned counsel for the respondent-State of Jharkhand submits that the amount in question was disclosed by the State of Bihar

and that is why the impugned order has been passed. He refers to Annexure-7 of the writ petition and submits that calculation is there, so far as

recovery of Rs.11,78,500/- is concerned. He further submits that in the LPC, recovery of that amount is also disclosed. By referring this document, he

submits that because of such reason, recovery order has been passed. So far as payment of retirement benefits to the petitioner is concerned, learned

counsel for the respondent-State of Jharkhand is not in a position to submit as to whether the same has been paid or not.

7. Mr. Diwakar Upadhyay, learned counsel for the respondent-State of Bihar submits that respondent nos. 6 to 8 have filed counter affidavit and in

paragraph 9 of the said counter affidavit, it has been stated that the grievance of the petitioner with respect to non-adjustment of advance of

Rs.11,78,500/- is related to the office of respondent no.10 and the State of Bihar has nothing to do with the adjustment of the said advance. He further

submits that respondent no.10 is the competent authority to give specific reply to the averments made in the writ petition with respect to the said

grievance of the petitioner.

8. Pursuant to the said stand of the respondent-State of Bihar, notice was issued upon respondent no.10 by this Court vide order dated 19.10.2020. On

16.12.2020, Mr. Ashish Kumar Thakur appeared on behalf of respondent no.10 and he took time for filing counter affidavit and the counter affidavit

has been filed on behalf of respondent no.10, wherein, it has been stated that the document with regard to work done by the petitioner is not available

with respondent no.10.

9. Having heard learned counsel for the parties, the Court has gone through the materials on the record. In the impugned order dated 05.03.2019, it

has been disclosed in so many words that in spite of best efforts and special messenger deputed by the competent authority, nothing has been

procured in that regard. In paragraph 13 of the impugned order dated 20.02.2020, contained in Annexure-15 of the supplementary affidavit filed by the

petitioner, it has been disclosed that the petitioner has submitted the book of accounts and it has also been stated in clear terms that with regard to due

amount of Rs.11,78,500/-, no source of adjustment has been disclosed and that is why the Executive Engineer has directed to recover that amount

from the pensionary benefits of the petitioner. However, it has been further stated that the Executive Engineer has made certain objections. No

departmental proceeding was pending against the petitioner before his retirement. It has been submitted at bar that no criminal case is pending against

the petitioner. There is no reason why the amount, which has not been established in spite of so many efforts made by the respondents, has been

ordered to be withheld and not paid to the petitioner. On perusal of the impugned

orders, it is clear that there is no material with regard to the said amount against the petitioner. A reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of State of Jharkhand v. Jitendra Kumar Srivastav, reported in (2013) 12 SCC 210. Paragraphs 11 and 16 of the said judgment are quoted herein below:

11. From the reading of the aforesaid Rule 43(b), following position emerges:

(i) The State Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave

misconduct either in a departmental proceeding or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the departmental proceeding or judicial proceeding are pending.

(iii) The power of withholding leave encashment is not provided under this Rule to the State irrespective of the result of the above proceedings.

(iv) This power can be invoked only when the proceedings are concluded finding guilty and not before.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article

300-A of the Constitution of India reads as under: "300-A. Persons not to be deprived of property save by authority of law.--No person shall be

deprived of his property save by authority of law.

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be

deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that

attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of

administrative instruction cannot be countenanced.

10. The State of Bihar in paragraph 9 of their counter affidavit has disclosed that there is no document to that regard. Pursuant to issuance of notice

upon respondent no.10, he has appeared and he has also filed counter affidavit, wherein, it has been stated that respondent no.10 is also not able to

disclose anything against the petitioner.

11. In that view of the matter, the impugned orders cannot sustain in the eyes of law. Accordingly, the impugned order dated 05.03.2019, contained in

Annexure-13 of the writ petition and the impugned order dated 20.02.2020, contained in Annexure-15 of the supplementary affidavit filed by the petitioner, are quashed. The respondents shall expedite the process for payment of pension to the petitioner and they will complete the exercise within a period of twelve weeks from the date of receipt/production of a copy of this order.

12. Accordingly, the writ petition stands allowed and disposed of.

13. Resultantly, I.A. No. 6405 of 2020 also stands disposed of.