

(2024) 01 CHH CK 0042

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 3925 Of 2016, 952 Of 2017

Manik Lal Bandhey

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 09-01-2024

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2024) 01 CHH CK 0042

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : RS Patel, Malay Agrawal, Meena Shastri, Ramcharan Sahu, Manoj Sinha

Final Decision : Allowed

Judgement

1. Since both these petitions relate to the same petitioner and involve the issue of non-payment of his retiral dues including the gratuity amount, they are being disposed of by this common order.

2. WPS No.3925/2016 has been filed by the petitioner seeking direction to the respondent authorities to grant him the gratuity amount of Rs.6,20,671/-. WPS No.952/2017 has been filed for setting aside the orders dated 4.10.2016 and 29.11.2016 (Annexure P/1) whereby a total sum of Rs.6,21,281/- has been ordered to be recovered from the gratuity amount of the petitioner.

3. Brief facts of the case, as mentioned in the writ petitions, are that the petitioner retired on 31.12.2012 from the post of Superintendent of Industrial Training Institute, Bhatgaon, Distt. Dhamtari. On 11.4.2014 the petitioner made a representation to the respondent No.5/Office Superintendent, ITI, Dhamtari for grant of gratuity vide Annexure P/4. Though on 28.8.2015 the Joint Director (Training), Industrial Training Institute, Raipur Region, issued a Memo (Annexure P/3) to respondent No.6 Mr MR Dhruw, Training Superintendent of ITI, Bhatgaon for issuance of No Dues Certificate to the petitioner within seven days so that all

his retiral dues could be paid to him but no such certificate was issued to him. Since the amount of gratuity was not paid to the petitioner, on 11.1.2016 he made a representation to the Deputy Director of CG Human Rights Commission for payment of gratuity of Rs.6,20,671/- as well as for issuance of No Dues Certificate vide Annexure P/2. Again on 8.3.2016 the petitioner made a representation (Annexure P/1) to the Joint Director of CG Human Rights Commission for payment of gratuity of Rs.6,20,671/- as well as for issuance of No Dues Certificate. However, till date the gratuity amount of the petitioner has not been released. Hence WPS No.3925/2016 has been filed for the following relief:

"10.1 That, this Hon'ble Court may kindly be pleased to issue a appropriate writ and direct the respondents authorities to pay the amount of gratuity Rs.6,20,671/- to the petitioner.

10.2 That, this Hon'ble Court may further be pleased to pass an appropriate order or issue writ as deemed fit under the facts and circumstances of the case and cost of the petition may also be awarded to the Petitioner."

As subsequent to filing of WPS No.3925/2016, on 4.10.2016 and 29.11.2016 the respondent authorities have issued orders for recovery of a total amount of Rs.6,21,281/- against the petitioner from his gratuity, the petitioner has filed WPS No.952/2017 for the following reliefs:

"10.1 That, this Hon'ble Court may kindly be pleased to quash the impugned orders dated 04.10.2016 and 29.11.2016 (Annexure P-1).

10.2 That, this Hon'ble Court may kindly be pleased to issue a appropriate writ and direct the respondents authorities to pay the retiral dues to the petitioner.

10.3 That, this Hon'ble Court may further be pleased to pass an appropriate order or issue writ as deemed fit under the facts and circumstances of the case and cost of the petition may also be awarded to the Petitioner."

4. Learned counsel for the petitioner submits that the petitioner retired from the post of Superintendent of ITI, Bhatgaon, Distt. Dhamtari on 31.12.2012 after serving for 33 years but despite several request, oral as well as in writing, the gratuity amount of Rs.6,20,671/- was not paid to him. Though through Memo dated 28.8.2015 the Joint Director (Training), ITI, Raipur Region directed respondent No.6 to issue No Dues Certificate to the petitioner within 07 days so that all his retiral dues could be paid to him but respondent No.6 did not act accordingly. The petitioner has made several representations to the respondent authorities in this regard but of no avail. It is well settled that gratuity is property of retired employee/officer which is earned by dint of long, continuous and unblemished service and this right cannot be taken away without following the due process of law.

Reliance has been placed on the decisions in the matters of State of Jharkhand and others Vs. Jitendra Kumar Srivastava and another, (2013) 12 SCC 210; State

of Punjab and others Vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334 and Ramlal Sharma Vs. State of CG and others, ILR 2016 Chhattisgarh 390.

5. On the other hand, learned counsel for the respondents/State strongly opposes the prayer of the petitioner and submits that on the complaint made by the petitioner to the CG Human Rights Commission, Raipur regarding non-payment of gratuity amount and No Dues Certificate, notices were issued seeking explanation from the respondents, on which a three-member enquiry committee was constituted for examination of the petitioner's case vide order dated 26.11.2015 (Annexure R/1). During scrutiny of the records of ITI Bhatgaon, it was found by the Committee that an amount of Rs.1,38,726/- has not been deposited by the petitioner in the account of IMC or with respondent No.6. Hence, the Committee suggested for a detailed inquiry of entire records and cash book of ITI, Dhamtari. Copy of the enquiry report is filed as Annexure R/2. As the petitioner had not submitted the cash book of the head of Skill Development Initiative (SDI)/DUDA and Institute Management Committee (IMC), the Deputy Director, Directorate of Employment and Training vide notice dated 15.6.2016 (Annexure R/3) directed the petitioner and the In-charge of ITI, Dhamtari for personal hearing before the Commissioner of the department. After appearance of the petitioner, the Commissioner directed the Joint Director, ITI, Regional Office, Raipur to decide the matter of the petitioner as early as possible. Thereafter, the Joint Director after examining the records of the enquiry committee and physical verification of records of the ITI, came to the conclusion that an amount of Rs.1,86,131/- allotted under the head of SDI/DUDA is found less and similarly, under IMC an amount to the tune of Rs.4,35,150/- is also found less. In this regard, a report was prepared by the Joint Director for recovery of the aforesaid amount from the petitioner. Alongwith the aforesaid report, a communication dated 28.9.2016 was sent to the Commissioner, Directorate of Employment and Training, Raipur by the Joint Director (Training) with a request to recover the aforesaid amount from the amount payable to the petitioner as gratuity vide Annexure R/5. Thus, the department after providing reasonable opportunity of hearing to the petitioner has come to the conclusion that a total amount of Rs.6,21,281/- is recoverable from the petitioner because since last 10 years, he was having the charge of drawing and disbursing officer of ITI, Dhamtari from where he retired. In these circumstances, the amount of gratuity has not been paid to the petitioner. The action taken by the respondent authorities is just, proper and legal and as such, the petitioner is not entitled for any relief in these petitions and they are liable to be dismissed.

6. Learned counsel appearing for respondent No.6 supporting the contention of the respondents/State submits that respondent No.6 wrote a letter on 11.9.2015 (Annexure R-6/1) to the Joint Director (Training) regarding handing over of charge to him by the petitioner wherein it was clearly mentioned that the petitioner has not completely handed over the charge and certain amount under difference schemes is found less. After enquiry, it was found that a total amount of Rs.6,21,281/- is recoverable from the petitioner and therefore, the amount of

gratuity was not paid to him. In these circumstances, the present petitions being without any substance are liable to be dismissed.

7. In his Rejoinder in WPS No.3925/2016, learned counsel for the petitioner has submitted that in para 6 of the Return filed by the State/respondents, it is stated that on the complaint of the petitioner to the CG Human Rights Commission regarding non-payment of gratuity, the respondent authorities constituted a committee on 26.11.2015 i.e. after 3 years of his retirement, whereas on the contrary, 4 months prior thereto, on 28.8.2015 (Annexure P/3) respondent No.2 wrote a letter to respondent No.3 wherein it is clearly mentioned that the entire official charge has already been taken by respondent No.6 from the petitioner. Thus, on the one hand the respondent authorities have accepted that the entire official charge has been taken by respondent No.6 and on the other hand, it is being disputed by them. Further, during the inquiry conducted by the Committee, the petitioner was not called and no opportunity of hearing was afforded to him, and only on the basis of statement of respondent No.6 Mr. MR Dhruv, the report was prepared against the petitioner.

It is also averred in the Rejoinder that the instant petition was filed on 14.8.2016 and respondent No.6 appeared before this Court on 19.9.2016 pursuant to direction of this Court and just 9 days thereafter on 28.9.2016 the recovery order (Annexure R-6/2) was issued against the petitioner for a sum of Rs.6,21,281/- which is approximately equivalent to the petitioner's gratuity amount. It clearly shows the malafides, arbitrariness and colourable exercise of power on the part of the respondent authorities in particular respondent No.6 who was having personal grudge against the petitioner as the petitioner had challenged the transfer order whereby respondent No.6 was transferred to his place from Rajnandgaon on his own request and the petitioner was transferred to Kondagaon, by filing a writ petition i.e. WPS No.1148/2012 which was decided in his favour. On 4.11.2016, during pendency of this writ petition, the recovery order has been issued against the petitioner vide Annexure P/6, to which the petitioner has submitted reply in detail vide Annexure P/7.

8. Heard learned counsel for the parties and perused the material available on record.

9. It is not in dispute that the petitioner retired from the post of Superintendent of ITI, Bhatgaon, Distt. Dhamtari on 31.12.2012 and till date his gratuity amount has not been paid to him.

10. Learned counsel for the respondents submit that as per report of the enquiry committee, an amount of Rs.1,86,131/- allotted under the head of SDI/DUDA was found less and similarly, under the IMC head, an amount to the tune of Rs.4,35,150/- was found less and communication dated 28.9.2016 was sent to the Commissioner, Directorate of Employment and Training, Raipur with a request to recover the aforesaid amount from the amount payable to the petitioner as gratuity vide Annexure R/5.

11. The petitioner has filed various documents with these petitions, which show that previously the petitioner filed a writ petition i.e. WPS No.1148/2012 against his transfer wherein this Court vide order dated 6.3.2012 (Annexure P/9) while directing the petitioner to file a representation against the transfer order, considering the fact that he is going to retire in a short period of 9 months, further directed that no coercive steps shall be taken against him till decision of his representation. According to the petitioner, respondent No.6 has, malafidely and with ill-intention, not cooperated in the official work as also not issued No Dues Certificate in his favour.

12. The Hon'ble Apex Court in the matter of Jitendra Kumar Srivastava (supra), held in para 16 of the judgment as under:

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300-A of the Constitution of India reads as under:

"300A 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.

13. In the matter of Ramlal Sharma (supra), this Court observed in para 10 of the order as under:

"10. In the matter of State of Jharkhand and others v. Jitendra Kumar Srivastava and another, (2013) 12 SCC 210, it has been held by Their Lordships of the Supreme Court that gratuity and pension are not bounty and it is thus a hard earned benefit which accrues to an employee and is in the nature of property. This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India. It has been held following the decisions of the Supreme Court in the matters of Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330 and D.S. Nakara v. Union of India, (1983) 1 SCC 305. The report states as under:-

"It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words: (SCC pp.319-20, paras 18-20)

"18. The approach of the respondents raises a vital and none too easy of answer,

question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deoki Nandan Prasad v. State of Bihar and Ors.* wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab and Anr. V. Iqbal Singh* (1976) 2 SCC 1."

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.

14. The right to receive pension was recognised as a right to property by the Constitution Bench judgment of this Court in *Deokinandan Prasad v. State of Bihar.*"

14. In the matter of *Rafiq Masih* (supra), the Hon'ble Supreme Court observed in para 18 and 19 of the judgment as under:

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within

one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

19. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”

15. In this case also, it is evident that the petitioner filed a detailed explanation vide Annexure P/7 and denied all the allegations but without any proper enquiry, the petitioner's gratuity was withheld and subsequently, the impugned recovery orders were issued directing for recovery of a total amount of Rs.6,21,281/- from the amount payable to the petitioner as gratuity. It is also clear that the petitioner stood retired on 31.12.2012 and the impugned recovery orders were issued four years thereafter. It also remains undisputed that no proper enquiry was conducted against the petitioner after his retirement in accordance with law. In these circumstances, the impugned recovery orders are not sustainable and are liable to be set aside.

16. On the basis of aforesaid discussions and in light of the settled principles of law regarding payment of gratuity, as referred to above, both the writ petitions are allowed. The impugned orders dated 4.10.2016 and 29.11.2016 (Annexure P/1 in WPS No.952/2017) are hereby set aside. The respondents are directed to calculate the retiral dues of the petitioner and make payment of the same to him within a period of two months from the date of receipt of copy of this order, failing which the aforesaid amount shall carry simple interest @ 6% per annum.