**(2011) 07 JH CK 0242**

**In the Jharkhand High Court**

**Case No :** Writ Petition (S) No. 6226 of 2006

Manshidh Kandulna APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

**Date of Decision :** 14-07-2011

**Acts Referred:**

Bihar (Now Jharkhand) Pension Rules, 1950 — Rule 43

**Citation :** (2011) 4 JCR 26

**Hon'ble Judges :** Poonam Srivastava, J

**Bench :** Single Bench

## Judgement

Mrs. Poonam Srtvastav, J.—By the Court.--Heard learned counsel on behalf of the petitioner and counsel on behalf of the State as well as for the Accountant General.

2. Counter and rejoinder affidavits have been exchanged and pleadings are complete. As agreed between the respective counsels, the writ petition is heard finally.

3. The instant writ petition is preferred for a direction in the nature of mandamus to the respondents to refund the amount of Rs. 22,800/- with interest which has been deducted from his arrears of pension after a lapse of 13 years of his retirement on the ground that the petitioner has not passed Hindi Noting and Drafting Examination.

4. The petitioner was working as panchayat sewak w.e.f. 1.4.1953 and retired on 31st December. 1993. The petitioner states that he was entitled for exemption from passing the departmental examination in Hindi Noting and Drafting Examination since he had completed 50 years 6f age and Government Notification dated 21.6.1978 [Annexure-2] provides entitlement of an employee for exemption from passing said examination in the event he has appeared repeatedly in the examination and was not successful or alternatively, he was not able to participate in the examination on account of certain reasons relating to

 

his discharge of duty. Exemption could be granted only after ascertaining that he has unblemished career record, there is no enquiry or departmental proceeding pending against him and he has never been punished in career. The argument on behalf of the counsel is that this amount of deduction was illegal since he has already retired. It is irrespective of the fact that whether he was granted exemption or not.

5. I have heard learned counsel on behalf of the Accountant General who has brought to my notice Annexure-4, which is a letter dated 3rd March, 2006, issued from the office of the Accountant General (A & E). Bihar, Patna. The submission is that the aforesaid amount of Rs. 22,800/- was deducted as an excess payment was made to the petitioner which he was not entitled but he has specified that the deduction was not on account of any fraud or misrepresentation.

6. The contention raised by the counsel is that no deduction can be made in view of the Full Bench decision in the case of Munari Devi v. Bihar State Electricity Board and others, reported in 2007 (4) JCR 471 (Jhr) (FB) : 2008 (1) JLJR 484. In the said case, the recovery was made on account of wrong fixation of pay. Further reliance has been made in the case of Smt. Normi Topno v. State of Jharkhand and others, reported in 2008 (1) JCR 381.

7. The ratio laid in these cases is that the recovery cannot be made in case there is no allegation of fraud or misrepresentation at the behest of the concerned employee specially since the incumbent has retired long back. The recovery cannot be made without following procedure laid down in Rule 43-B of the Bihar (now Jharkhand) Pension Rules. The principle laid down in the various decision is that after retirement, there is no relationship of employer and employee in existence and as such, no recovery can be made from the retiral benefits without following the procedure of law as provided under Rule 43-B of the Bihar (now Jharkhand) Pension Rules and hence, in these circumstances, this Court has followed Full Bench decision in the case of State of Jharkhand and Another v. Ram Kripal Mandal, reported in 2010 (4) JCR 105 (Jhr) : 2009 (4) JLJR 188 and in the case of State of Jharkhand and others v. Padmalochan Kalindi and another, reported in 2008 (1) JCR 5.

8. In the instant case, admittedly there is no allegation of any amount of fraud or misrepresentation and the incumbent retired long back and deduction has been made after 13 years. Learned State counsel was unable to apprise this Court as to whether any exemption was granted to the petitioner or not or any other reason for the deduction of the aforesaid amount. In the facts and circumstances, the deduction made from the post retiral benefits of the petitioner is liable to be reimbursed with interest at statutory rate. It is also made clear that the Department can very well inquire into the question whether the pension has been fixed assuming that the petitioner was. granted exemption or it is otherwise. This fact is necessary to ascertain so that the correct pension may be disbursed to the petitioner without any deduction since admittedly the law does

 

not provide any deduction whatsoever.

9. Considering the aforesaid facts, this writ petition is disposed of. The deduction made are liable to be disbursed to the petitioner within a period of three months from the date of receipt/production of a copy of this order