(2010) 05 JH CK 0084

In the Jharkhand High Court

Md. Yasin APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2010) 05 JH CK 0084

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred mainly against an order, passed by the District Superintendent of Education, Dumka, dated 7th January, 2009 (Annexure-1 to the memo of petition), whereby, excess drawn salary from the Year, 1997 to the Year, 2006, has been ordered to be recovered from the Pension and Gratuity of the present petitioner and that too, without holding any inquiry, worth the name, and in utter violation of the Jharkhand Pension Rules, 2000 and also in gross violation of the law, laid down by this Court. The decisions, reported in

(a) 2007 (4) JLJR 457

(b) 2009 (1) JLJR 431

The counsel for the petitioner relies upon the aforesaid two decisions as well as a decision, rendered by this Court in W.P.(S) No. 1019 of 2009, dated 27th June. 2009, and submitted that without holding any inquiry, no amount from Pension or Gratuity can be deducted, when salary was paid from the Year. 1997 to the Year. 2006 without any misrepresentation or fraud, played by the present petitioner. The suggestion of the Office of the Accountant General is not conclusive evidence at all. Such types of letters cannot be implemented like a judgment or a decree for encashment of the money from the retirement benefits. On the contrary, such type of letters of the Accountant General, ought to be seen from the view point of the Jharkhand Pension Rule, 2000, and in accordance with rules, after giving proper notice and adequate opportunity of being heard, only, the amount can be deducted and that if there is no misrepresentation by the present petitioner for getting any higher salary, never such amount can be deducted, in view of the decision, rendered by the aforesaid Full-Bench of this Court.

2. It is further submitted by the counsel for the petitioner that the letter of the Accountant General is for awakening the senses of the Government officer, but, it is not a conclusive evidence for the recovery of the amount and, therefore, the order at Annexure-''1'', passed by the District Superintendent of Education, dated 7th January, 2009, deserves to be quashed and set aside.

3. Learned Counsel for the respondent-State has submitted that the petitioner has wrongfully been paid higher salary and, therefore, when the whole matter had been sent for fixation of Pension and Gratuity to the Accountant General Office, this aspect of the matter has been pointed out by the Office of the Accountant General that instead of Rs. 7300/- per month, the petitioner has drawn Rs. 7700/- per month and, therefore, the order, Annexure-''1'' has been passed by the District Superintendent of Education, Dumka and no body should be allowed to retain the benefit, wrongly given under the law and, therefore, the petition deserves to be dismissed.

4. I have heard learned Counsel appearing for the office of Accountant General, Jharkhand, Ranchi, i.e. Respondent No. 3, who has submitted that it is true that the petitioner was wrongly given salary of Rs. 7700/- per month and, therefore, a letter was written by the Accountant General Office to the Government, but, never it has been suggested that the amount should be deducted without following the law. It ought to be kept in mind by the Government officers that the Jharkhand Pension Rules, 2000, ought to have been followed scrupulously, especially Rule, 202 to be read with Sections 197 and 199 of the Jharkhand Pension Rules, 2000 and in the light of circulars, issued by the Government of Jharkhand from time to time, the amount ought to have been deducted after following the procedure, as established by the Jharkhand Pension Rules, 2000.

5. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, I hereby, quash and set aside, the order, passed by the District Superintendent of Education, Dumka, dated 7th January, 2009 (Annexure-''1'' to the memo of petition) for following facts and reasons:

(i) The petitioner was serving as a Teacher with school, managed and controlled by the respondent-State. For the Years 1997 to 2006, petitioner was fetching salary of Rs. 7700/- per month and thereafter the petitioner retired on 30th September, 2006.

(ii) It appears that for fixation of Pension and Gratuity, the service book of the petitioner was sent to the Accountant General Office by the State official(s) and it has been brought to the notice of the Government officers by the letter of the

Accountant General that there is some anomaly in the grant of pay scale/pay to the present petitioner as instead of Rs. 7700/- it should have been Rs. 7300/-.

(iii) It appears that this very letter has been directly utilized for deducting the amount from the pension and/or Gratuity which is an error on the part of the respondents.

(iv) Rule 202 of the Jharkhand Pension Rules, 2000 which reads as under:

202. (1) Should the amount of pension granted to a Government servant be afterwards found to be in excess of that to which he is entitled under the rules, he shall be called upon to refund such excess. [For this purpose the Government servant concerned shall be served with a notice by the pension sanctioning authority, requiring him to refund the excess payments within a period of two months from the date of receipt by him of the notice. On his failure to comply with the notice the pension sanctioning authority shall order that such excess payments shall be adjusted by short payments of pension in future, in one or more installments, as the authority may order]

(2) If after the pension report was made by the Accountant-General any event occurs which necessitates recalculation of the amount of pension, the fact shall be promptly reported to the Accountant General by the head of the department or the head of the office, as the case may be. If no such event has occurred, the fact shall nevertheless be reported to the Accountant-General within a week from the date on which the Government servant retires.

(Emphasis supplied)

(v) In view of these rules, whenever any amount is required to be deducted from the Pension or Gratuity, a notice is must to be served upon a retired Government servant and thereafter order should have been passed by the concerned officer for refund of excess amount and if this refund is not paid by the retired employee, thereafter, the order of deduction from Pension and Gratuity should have been passed.

(vi) It has been held by this Court in W.P. (S) No. 1019 of 2009, dated 27th June, 2009 in Paragraph No. 4 (VII and VIII) which reads as under".

"(vii) In view of the aforesaid rules, it appears that the Rules, 2000, which has been adopted by the State of Jharkhand in pursuance of the notification published in exercise of powers u/s 85 of the Bihar Reorganization Act, 2000, all care has to be taken by these rules to secure the repayment or refund of the excess amount paid to the government employee. A detailed procedure is prescribed for the calculation of pension as well as of checking by the Accountant-General''s office. As stated hereinabove the Accountant-General''s office will try to resolve and dissolve the discrepancies calling upon the concerned department, but, if these discrepancies are not capable of being dissolved or resolved, a report shall be given under Rule 200(1) of the Rules, 2000, and Accountant General''s office will return all the pension papers to the competent authority with report, and if the said report Is to be implemented for getting refund of the excess amount paid to the government servant then the procedure as laid down in the Rule 202 of the Rules. 2000 must be followed by the concerned government authority.

(viii) Report given by the office of Accountant General u/s 200(1) of the Rules, 2000, is not a conclusive evidence. It cannot be encashed like a decree of a court. It Is not a gospel truth. The report is mere suggestion or guide line to the Government Departments. It is given to awake the senses of the Government Department that amount requires to be deducted. But, before implementing the same, procedure established by law (i.e. as envisaged in Rule 202) must be followed. The report of Accountant General is not permitting to bye pass the law or principles of natural justice.

Therefore, as required under Rule 202 of the Rules, 2000, before deducting any amount from retirement benefits, a notice must be given to the retired government employee or to his/her legal heir in case of death. Thereafter, upon hearing him an order of refund of excess amount paid can be passed. If the amount is not refunded, then order of deduction from retirement benefits can be passed. It is needless to say that order of deduction of amount must be speaking order i.e. it must contain reasons."

(vii) Thus, a report/letter of the Accountant General is not permitting to bye-pass the law or principles of natural justice. As per Rule, 202 of the Rules, 2000. A notice must have been given by the Government to the retired employee. In the facts of the present case, no such notice was ever given by the respondents to the petitioner and directly an order of deduction of amount has been passed by the District Superintendent of Education, Dumka from the Pension/family pension, as per Annexure-1 to the memo of petition. This order is in gross violation of Rule 202 of the Jharkhand Pension Rules, 2000.

(viii) Rule 43 of Jharkhand Pension Rules, 2000 reads as under:

43 (a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner Is convicted of serious crime or be guilty of grave misconduct The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

(ix) It has been held by the Full Bench of this Court in the case of Laxman Prasad Gupta v. The State of Jharkhand and Ors. as reported in 2007 (4) JLJR 459 in paragraph No. 20, which reads as under: -

"In view of the above discussion, we come to the following conclusion. To sum up:

In the light of the absence of any material to show that the excess amount was received by the petitioner on misrepresentation, collusion, fraud or negligence, the said excess amount cannot be recovered out of the retiral dues, after retirement, without following the procedure contemplated under Rule 43(b) of the Bihar Pension Rules. In this case the said procedure, which is mandatory, has not been followed. Therefore, the action of the respondents for recovery of the amount from the retiral dues is not valid in law."

(Emphasis Supplied)

In view of the aforesaid decisions also, procedure was required to have been followed by the respondents, before passing an order of deduction of sizable amount from the retirement benefits.

(X) It has been held by this Court in the case of Shyamdhan Mahato v. The State of Jharkhand and Ors. as reported in 2009 (1) JLJR 431 especially in paragraph Nos. 4 and 5, which read as under:

"4. It appears that neither any notice was given nor any reason has been assigned for passing the punitive order and initiating a recovery from the petitioner''s retiral benefit and recalling the earlier order dated 28.6.1993 even though the same was approved by the Office of the Accountant General who is the competent authority pursuant to the retirement.

5. Considering the aforesaid facts and circumstances of the case this writ petition is allowed to the extent that no recovery can be made for the payment which has already been done to the petitioner pursuant to his retirement. The impugned order dated 22.2.2003 contained in Memo No. 181 issued under the signature of Chief Conservator of Forest has been passed without even issuing as show cause or affording any opportunity to the petitioner and it is a non-speaking order without assigning any reason. Even under Rule 202 of Jharkhand Pension Rule 1950 notice is required to be given before reducing/deducting the pension. Thus, the impugned order dated 22.2.2003 is on the face of it, is arbitrary, illegal and violates the well settled cardinal principles of natural justice and also is violative of Article 14 of the Constitution of India and Is accordingly quashed.

(Emphasis Supplied)

In view of the aforesaid decision also, whenever any order is passed of a recovery of amount, without issuing any notice, the same deserves to be quashed and set aside. In the facts of the present case also, it is not alleged by the respondents that there was a misrepresentation or fraud played by the petitioner and, therefore, this amount of salary was paid. In absence of any of these allegations, it appears that there is no fault lies on the part of the petitioner in getting the amount of Rs. 7700/- per month, instead of Rs. 7300/- per month.

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I hereby, quash and set side, the order, passed by the District Superintendent of Education, dated 7th January, 2009 at Annexure-1 to the memo of petition.

7. Accordingly, this writ petition is allowed.

