(2015) 04 JH CK 0031

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1647 of 2010

Namlem Topno APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 300-A

Citation : (2016) 1 AJR 621 : (2015) 145 FLR 1093

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Bhanu Kumar, for the Appellant; Suresh Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Pramath Patnaik, J.—In the accompanied writ application the petitioner has, inter alia, prayed for issuance of writ/direction in the nature of mandamus commanding the respondents to sanction and pay the post retiral dues of the petitioner including amount of pension, gratuity cash in lieu of unutilized earned leave etc. along with statutory interest since the date of retirement i.e. 31st May, 2009 till the date of payment and for direction to the respondents to regularize the period of services from 31.10.2007 till 12.3.2008. The factual matrix, bereft of unnecessary details in a nutshell is that the petitioner initially joined on the post of Assistant Teacher on 1.9.1977. After rendering unblemished services for more than 3 decades the petitioner retired on 31.5.2009. The grievance of the petitioner is that in spite of retirement, the post retirement benefits have not been paid to the petitioner. During pendency of the writ application, I.A. No. 2598 of 2012 has been filed praying therein for payment of the amount of Rs. 2,40,713/- deducted from the gratuity and for regularization for the period from 31.10.2007 to 12.3.2008. This Court vide order dated 3.12.2014 after hearing the Counsel for the respective parties has been pleased to observe that an amount of Rs. 2,40,713/- has been withheld from the total amount of Rs.

5,19,183/- payable under the head of gratuity vide order dated 4.5.2012 issued by the office of Accountant General, Jharkhand. The respondents have chosen to deduct the aforesaid amount after his retirement on wholly incorrect facts and without any proceeding under Rule 43(b) of the Jharkhand Pension Rules and the respondent No. 6-District Education Officer, East Singhbhum, Jamshedpur was directed to observe the aforesaid contention in accordance with law.

In pursuance of the order dated 3.12.2014, a counter-affidavit has been filed on behalf of respondent No. 6 i.e. District Education Officer, East Singhbhum, Jamshedpur, wherein it has been stated that in paragraph 4 of the said affidavit that the construction work was entrusted to the then Head Mistress namely Namlem Topno-petitioner, and for that cause a sum of Rs. 18,00,000/- was paid to her for school building construction. Out of this amount of Rs. 18,00,000/- a sum of Rs. 12,23,098/- was spent for construction of new building. Again this work was given to a junior teacher Mr. Nizamuddin Khan, who also spent a sum of Rs. 3,37,263/- for construction of the school building, as such a sum of Rs. 2,40,713/- was found due with the petitioner. In para 5 of the supplementary counter-affidavit, it is also mentioned that as the measurement book work was done during the period of the petitioner and it was only for Rs. 12,20,989.78 and also by a junior teacher for Rs. 3,37,263/-, hence a sum of Rs. 2,40,713/- was found lying with the petitioner. A copy of measurement book is annexed as Annexure-A to the said affidavit. It is also stated in the supplementary counter-affidavit that vide office letter No. 3282 dated 30.10.2010, the then District Education Officer, East Singhbhum, Jamshedpur has asked the petitioner for adjustment of the said amount lying with the petitioner. Again, vide letter No. 3379 dated 16.11.2010, the petitioner was reminded for adjustment of Rs. 2,40,713/- (Annexure C and D to the said affidavit). It is further stated that due to non-cooperative attitude of the petitioner, the District Education Officer, East Singhbhum, Jamshedpur took a decision to deduct a sum of Rs. 2,40,313.00 from the gratuity payable to the petitioner and so far as regularization for the period in question i.e. from 31.10.2007 to 12.3.2008 is concerned, the decision was communicated to the petitioner vide letter No. 302 order dated 21.2.2015, vide Annexure G to the said affidavit.

2. Heard Mr. Bhanu Kumar, learned Counsel for the petitioner, Mr. Suresh Kumar, learned Counsel for the State as well as Mr. S. Srivastava, learned Counsel for the Accountant General.

3. Having heard learned Counsel for the petitioner and the rivalized submissions on behalf of the respondents, the moot questions to be determined by this Court is as to whether the respondents are competent to withheld the disputed amount of Rs. 2,40,713/- from the gratuity without resorting to Rule 43(b) of the Jharkhand Pension Rules. Admittedly, at the time of retirement of the petitioner i.e. 31.5.2009 no proceeding was pending nor contemplated against the petitioner for any pecuniary loss caused to the Government. It is no more res Integra when the pension or gratuity is no more a grants or bounty but a

property under Article 300-A of the Constitution of India. In the instant case, as revealed from the available records the aforesaid amount has been deducted from the gratuity without any sanction of any authority and that too without resorting to Rule 43(b) of the Jharkhand Pension Rules.

4. Learned Counsel for the petitioner has strenuously urged before this Court that the petitioner has been prejudiced from the service book, as per Annexure-B to the supplementary counter-affidavit filed by the respondents, it appears that no due was outstanding against the petitioner. But, in the bottom, it has been mentioned that Rs. 2,40,713/- is recoverable from the petitioner which according to the petitioner is nothing but an afterthought, is causing harassment and financial stagnancy.

5. On the other hand, learned Counsel for the State countering the impassioned arguments advanced on behalf of learned Counsel for the petitioner has vehemently contended that in the instant case, Rule 43(b) is applicable because there was some defalcation on the part of the petitioner for which the respondent authorities has withheld an amount of Rs. 2,40,713/-. Learned Counsel for the respondent No. 8-Accountant General submits that they have issued letter dated 6.7.2010 on the basis of sanction and scrutiny of the service book of the petitioner.

6. Having heard learned Counsel for the respective parties recovery of Rs. 2,40,713/- appears to be not justified in view of the following facts and reasons:

(I) Admittedly, the petitioner retired on 31.5.2009 after rendering unblemished service. The Rule 43(b) of the Pension Rule, envisages that the State Government further reserve to themselves the right to withholding or withdrawing a pension or any part of it, whether permanently or for specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct, or to have caused pecuniary loss to the Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.

The said provision has been extensively dealt with by this Court in a Full Bench decision in the case of Dr. Dudh Nath Pandey Vs. The State of Jharkhand, The Secretary, Animal Husbandry and Fishery Department, Government of Jharkhand, The Joint Director (Director) (Poultry), Animal Husbandry Department and The Accountant General, (2007) 2 BLJR 2847 : (2007) 115 FLR 884 : (2009) 2 SLJ 105 wherein this Court has held that Rules 43(a) and 43(b) of Bihar Pension Rules gives no power to the Government to withhold gratuity and pension during the pendency of the departmental proceeding. It does not give any power to withhold leave encashment at any stage either prior to the proceeding or after conclusion of the proceeding. In view of the Full Bench judgment of this Court referred in Dr. Dudh Nath Pandey 2007 (115) FLR 884 (supra), it is no more res integra that no amount can be withheld from the gratuity without resorting to Rule 43(b) of the Jharkhand Pension Rules.

(II) That on perusal of the service book, it appears that on the date of retirement no due was outstanding against the petitioner to be recovered but, on the bottom, it has been mentioned that Rs. 2,40,713/- is recoverable, which appears to be an afterthought causing financial stringency. Further, it has also been argued by the Counsel for the petitioner that after the charge framed against Mr. Nizamuddin Khan, the then Assistant Teacher, it clearly shows that no amount was recoverable from the petitioner so undoubtedly no amount could have been recovered from the gratuity of the petitioner in absence of any clear finding of fact regarding the alleged pecuniary loss caused to the Government.

7. In view of the aforesaid facts, reasons and judicial pronouncements, the respondents are directed to release forthwith an amount of Rs. 2,40,713/- withheld by the respondent authorities and the period 31.10.2007 to 12.3.2008 be regularized and consequential service benefits be extended to the petitioner within two months from the date of receipt of a copy of this order. With the aforesaid observation, this writ application is allowed and disposed of.