
(2005) 06 JH CK 0034

In the Jharkhand High Court

Case No : Writ Petition (S) No 3921 of 2004

Nand Lal Tanti

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-06-2005

Acts Referred:

Bihar/Jharkhand Pension Rules, 1950 — Rule 43(A)

Citation : (2005) 4 JCR 257

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Atanu Banerjee, for the Appellant; H.K. Mehta, G.A., for the Respondent

Judgement

N.N. Tiwari, J.—In this writ application the petitioner has prayed for a direction to the respondents to release his pension which according to him has not been sanctioned and fixed from the office of the Accountant General by PPO No. 337791 and to make payment of the arrears of pension.

2. The petitioner's case is that he retired from the service of the respondents on attaining the age of superannuation on 31.7.1998. After his retirement the petitioner was paid only provisional pension. But since August, 2003 even payment of that provisional pension has been stopped. The petitioner has claimed that he is entitled to get his full pension as has been sanctioned and fixed from the office of the Accountant General by the said PPO w.e.f. 1.8.1998. It has been stated that if the full pension and arrears thereof are paid, he will vacate the quarter.

3. Counter affidavit has been filed on behalf of the respondents stating, inter alia, that the petitioner retired long back, but, till date he has not vacated his quarter. The payment of pension has been withheld due to the said reason and the petitioner is in unauthorized occupation of the quarter, for which he is liable to pay penal rent. The demand notice has already been served by letter No. 1828, dated 9.10.2004. It has been further stated that for non-payment of rent

the pension has been withheld. The respondents have referred to the provisions of Rule 43(A) of the Jharkhand Pension Rules to justify their said stand.

4. During the pendency of the writ application, the petitioner filed I.A. No. 920/05 praying for addition of the prayer by which the petitioner has prayed for quashing the letter dated 9.10.2004 whereby penal rent has been charged and demanded from the petitioner.

5. It is an admitted fact that the petitioner is a retired employee and he is entitled to get his pension. The final pension has also been sanctioned and fixed by the office of the Accountant General. It is also admitted that the payment of pension can be withheld only by an order passed in due course of law. Jharkhand Pension Rules provide for such provision. The respondents have referred to Rule 43(A) to justify the withholding of the pension. From perusal of the said provisions of Rule 43(A) of the Jharkhand Pension Rules it is clear that the Government has right to withhold pension or withdraw pension or a part of it, if the pensioner is convict of serious crime or is guilty of grave misconduct and that the decision of the Government on the question of withholding or withdrawing the whole or in part of the pension would be final and conclusive. In this case, no order of the Government has been brought on record for withholding or withdrawing the whole or in part of the pension of the petitioner. In absence of any such order the respondents have absolutely no authority to withhold the petitioner's pension. So far the issuance of the letter for realization of the penal rent from the petitioner is concerned, the same has been issued during the pendency of this writ application and without giving any consideration that the decision of realization of such penal rent has also not been taken by the appropriate authority and the matter of realization of the penal rent from the employees, at the rate higher than the general rate applicable for such accommodation is still under consideration in view of Annexure-6. No final decision has been taken as yet. Admittedly the petitioner's pension has been withheld illegally without any order passed by the competent authority in accordance with the relevant pension rule.

6. Mr. Mehta, learned Government Advocate appearing on behalf of the respondents, submitted that by resolution of the Government of Bihar dated 29.2.1994 the provision has been made for penal rent which is fifteen times higher of the actual rent. In paragraph 14 of the resolution the said provision has been made conditional and the same is not absolute. Since the petitioner's pension has been illegally withheld, the matter requires consideration in that light before fixing the liability of penal rent on the petitioner. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is ready to vacate the quarter as soon as the arrears of his pension will be paid.

7. In view of the above, the respondents are directed to pay the entire arrears of pension to the petitioner which has been withheld since August, 2003. Since the petitioner has been deprived of the valuable right, the amount of pension and its arrears will carry interest. But in the circumstances of the case, the respondents

shall not charge any penal rent and the petitioner also shall not claim interest on the arrears of the pension. All the payments of the arrears of pension must be paid within the period of two months and the petitioner will vacate the quarter by 30th September, 2005. Since the petitioner even before withholding of the pension was liable for vacating the quarter and for that overstaying he is held liable for payment of three times of the rent. The petitioner shall pay the rent for the period commencing from two months after his retirement till the actual date of vacating the quarter at the rate of three times higher rate of the rent paid by him earlier. If the petitioner does not vacate the quarter by 30th September, 2005, he shall be liable to pay the penal rent as prescribed in the Government resolution for the entire period of unauthorized occupation.

8. It is made clear that the petitioner shall pay the arrears of rent at the rate aforesaid within one month from the date of receipt of the arrears of pension from the respondents.

9. With the above observations/directions this writ application is disposed of.