
(2018) 03 JH CK 0025
In the Jharkhand High Court
Case No : W. P. (S) No. 313 of 2018

NARESH PRASAD SINGH

APPELLANT

Vs

STATE OF JHARKHAND & ANR.

RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Constitution of India, 1950 — Article 300A
Jharkhand Service Code, 2001 — Rule 35
Jharkhand Pension Rules, 2000 —

Citation : (2018) 03 JH CK 0025

Hon'ble Judges : SHREE CHANDRASHEKHAR, J

Bench : Single Bench

Advocate : Arpan Mishra, Navin Kr. Singh

Final Decision : Allowed

Judgement

1. The prayer which survives in the writ petition is for payment of post-retiral benefits to the petitioner.

2. In the counter-affidavit, the respondents have disclosed that all admissible post-re(cid:39)ral benefits except gratuity and pension have been paid

to the petitioner.

3. For withholding gratuity and pension of the pe(cid:39)(cid:39)oner, ini(cid:39)a(cid:39)on of departmental proceeding by an order dated 21.02.2018 has been taken

as a ground.Â In â??State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.â? (2013) 12 SCC 210, the issue whether during pendency of

the departmental proceeding post-re(cid:39)ral benefits of an employee can be withheld has been authorita(cid:39)vely decided by the Supreme Court.

Â It has been held that pendency of the departmental proceeding is not a ground to withhold post-re(cid:39)ral benefits accrued to the pe(cid:39)(cid:39)oner.Â

Pension and gratuity which is pension as provided under Rule 35 of the Jharkhand Service Code, 2001, can be withheld or withdrawn on

conclusion of the departmental proceeding only when a finding is recorded that the employee has committed grave misconduct in discharge

of his duty while in service. Pension and other post-retirement benefits payable to an employee are akin to right to property under Article 300A

of the Constitution of India and it cannot be withheld or forfeited by an executive order, but only in accordance with law, has since long been

declared by the Supreme Court in *Deokinandan Prasad Vs. State of Bihar & Anr.* (1971) 2 SCC 330.

4. In view of the law on the subject which does not permit the employer to withhold post-retirement benefits of an employee merely on the

ground of initiation/pendency of the departmental proceeding, the Secretary, Department of Welfare, Government of Jharkhand is directed to

issue necessary instructions within four weeks, for fixation and payment of pension and release of gratuity to the petitioner, with interest @

5% on the aforesaid amount w.e.f. 01.12.2017, as provided under Appendix VI to the Jharkhand Pension Rules, 2000.

5. The writ petition stands allowed, in the above terms. A A A A A