(2024) 08 JH CK 0032

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3210 Of 2023

Navin Kumar Choudhary APPELLANT

Vs

State Of Jharkhand RESPONDENT

Date of Decision : 06-08-2024

Acts Referred:

Citation : (2024) 08 JH CK 0032

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Jayant Kr. Pandey, Praveen Akhauri, Richa Sanchita

Final Decision : Allowed

Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.

2. The instant application has been preferred by the petitioner praying therein for quashing and setting aside of the order as contained in Memo No. 230, dated 22.02.2023; whereby there was an order of recovery/adjustment of Rs. 1,70,254/- from the head of unutilized earned leave of the petitioner after his retirement.

3. The brief fact of the case is that the petitioner superannuated from his service on 31.07.2022 from the post of Work Inspector, Drinking Water & Sanitary Division, Ranchi East. After his retirement, the amount calculated for his unutilized earned leave was Rs.9,10,800/-. However, by way of office order No. 14 dated 22.02.2023 issued by respondent no.5, an amount of Rs. 1,70,254/- has been deducted in the name of excess payment and he was allowed to receive only Rs.7,40,546/- i.e. after deduction.

4. Learned counsel for the petitioner submits that after the said deduction, petitioner has submitted a written request to the Executive Engineer, Drinking Water & Sanitary Division, Ranchi East on 14.02.2023 and drew attention

towards the illegality committed and not to deduct/adjust the said amount in view of the judgment passed by the Hon'ble Apex Court in the case State of Punjab & Ors. Versus Rafiq Masih, reported in (2015) 4 SCC 334 and also in view of the resolution as contained in Memo No. 151 dated 09.11.2018.

5. Learned counsel further submits that the petitioner has not committed any mischief or fraud or any sort of wrong deal and had not suppressed any material facts in drawing the alleged excess payment paid by the authority concerned.

6. Learned counsel further submits that the action of the respondent is against the settled proposition of law as laid down by the Hon'ble Apex Court and their own resolution of not deducting any amount from a retired employee and/or from any employee who is going to retire; as such, the respondents be directed to refund the excess amount already recovered from the petitioner.

7. Learned counsel for the respondent-State submits that after the retirement of this petitioner, his unutilized earned leave was calculated at Rs. 9,10,800/-, but the petitioner is aggrieved that an amount of Rs. 1,70,254/- has been deducted while making payment of earned leave.

He further submits that as a matter of fact, the Accountant General (A&E) Ranchi Jharkhand has issued a letter dated 15.10.2022 that excess payment has been made to the petitioner and only in compliance to the aforesaid objection, the excess amount of Rs. 1,70,254/- has been adjusted while making payment of leave encashment; as such no error has been committed by the respondent in adjusting Rs. 1,70,254/- from the unutilized earned leave of the petitioner.

8. Having heard learned counsel for the parties, it appears that the petitioner superannuated from service of the respondents on 31.07.2022 from the post of Work Inspector, Drinking Water & Sanitary Division, Ranchi East. After his retirement his amount for his unutilized earned leave was calculated at Rs. 9,10,800/- but by way of office order no. 14 dated 22.02.2023 issued by respondent no. 5, an amount of Rs. 1,70,254/- has been deducted.

It is not the case of the respondent that the petitioner has committed any fraud in getting the excess payment. As matter of fact, in para 9 of the writ application there is a specific averment made by the petitioner that he has not committed any mischief and wrong doing and/or had not suppressed any material fact in drawing the alleged excess payment paid by the authority concerned. The said paragraph has not been denied by the respondent, inasmuch as, in reply to para 9 of the writ application there is only one reply that the said averments are not relevant for the purpose of present case as it was not a recovery; rather it is only a case of recovery of excess payment made due to wrong fixation.

9. As aforesaid, the petitioner was not involved in fixation of his salary and whatever excess payment has been made to this petitioner was perhaps due to the ignorance or inadvertence made by the respondent-authorities.

The law is now no more res integra that no recovery can be made from a retired employee belonging to Class-III and Class-IV service or Group-C and Group-D service.

Further, no recovery can be made from any employee who is due to retire within one year of order of recovery and further the recovery is not permissible when the excess payment has been made for a period in excess of 5 years.

10. As a matter of fact, the State Government has also taken a resolution keeping in mind the law laid down by the Hon’ble Apex Court in the case of Rafique Masih (Supra); as such looking to the overall facts and circumstance of the case, since the petitioner was not involved in any manner, whatsoever, in high fixation of his salary; as such the impugned order requires interference.

11. Accordingly, the office order No. 14 issued under Memo No. 230 dated 22.02.2023 is, hereby, quashed and set aside. The respondents are directed to refund the excess amount which was adjusted from the unutilized earned leave of the petitioner be refunded within a period of six weeks from the date of receipt/production of copy of this order; failing which the petitioner shall also be entitled for 7% compound interest from the date of recovery till the date of actual payment.

12. With the aforesaid direction, the instant writ application stands allowed.

