(2002) 04 JH CK 0034

In the Jharkhand High Court

Case No : WP (S) No. 4856 of 2001

Nawal Kishore Srivastava APPELLANT

Vs

Jharkhand State Electricity Board and Others RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Citation : (2002) 04 JH CK 0034

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Ajit Kumar and M.K. Sinha, Sheela Prasad, for the Appellant; I. Sen Choudhary and A.K. Jha, for the Respondent

Judgement

Tapen Sen, J.—In this writ application, the petitioner has prayed for quashing of the order dated 18.8.2001 (Annexure-2) issued by the respondent No. 4 (Deputy Director. Personnel, Patratu Thermal Power Station, Patratu), whereby and whereunder, a sum of Rs. 6496.09 has been ordered to be deducted from the retiral dues of the petitioner for not having passed the Hindi Noting and Drafting Examinations. The petitioner has also made a prayer for a direction upon the respondents to pay the retiral dues, namely, pension, gratuity, leave encashment etc. on the basis of the revised pay-scale w.e.f. 1.4.1997 and the arrears of salary also on the basis of the revised pay-scale w.e.f. 1.4.1997 to 30.4.1998.

2. According to petitioner, he retired on 30.4.1998 while he was working as an Accountant is the Tenughat Thermal Power Station, Lalpania under the Bihar State Electricity Board. According to petitioner, he had earlier felt himself aggrieved by an order dated 9.10.1999 by reason whereof 10% of gratuity had been withheld for not vacating his quarter. He was similarly also aggrieved by the inaction exhibited on the part of the respondents in not paying the post retiral dues. Consequently, the petitioner moved CWJC No. 1169/2001 which was disposed off by order dated 26.3.2001 as contained at An-nexure-1, whereby and whereunder, the respondent No. 2 were directed to pay the admitted retiral dues within six weeks from the date of receipt or production of a copy of the said

order. While disposing off the writ petition this Court also held that since the petitioner had retired in the year 1998 and even the admitted dues had not been paid to him, he was therefore entitled to interest @ 10% p.a. with effect from the date of retirement till the date of receipt of the payments along with costs which was assessed at Rs. 1000/-. Both the amount of interest and costs were also directed to be paid within the aforementioned period.

3. According to petitioner, the respondents paid nothing to the petitioner inspite of the direction of this Court as a result whereof he has filed a contempt application vide Contempt (W) No. 705/2001 which is said to be still pending before this Court.

4. The petitioner has now made a grievance that instead of paying, the respondents came out with a letter dated 18.8.2001 directing deduction of a sum of Rs. 6496.09 p. vide Annexure-2 to the writ petition and the grounds assigned for making such deduction is that the petitioner had not passed the Hindi Noting and Drafting Examination.

5. According to petitioner, he had never misrepresented about his passing of the Hindi Noting and Drafting Examination and as soon as he came to know about the relevant circulars, he had passed the said examination in the year 1985 itself.

6. The petitioner has stated that the BSEB had also issued a Notification dated 24.10.2000 in which employees of the Board had been given the benefit of pay revision w.e.f. 1.4.1997 and since the petitioner had retired on 30.4.1998 he, therefore, states that he is entitled to the arrears of salary with effect from the said day te. 1.4.1997 to 30.4.1998 together with pension, gratuity and leave encashment which is to be fixed on the basis of revision of pay-scale. The petitioner has also stated that he filed a number of representations before the authorities but no positive result came out from them as a result whereof he has now been constrained to move this writ petition.

7. An amendment application was also filed in the instant application by the petitioner wherein he has stated that during pendency of the writ petition an order has been passed on 23.11.2001 by which it has been ordered that deductions have made from the sanctioned amount of gratuity. By reason of the said order, the petitioner has further stated that the respondents have made wrong fixation of pension without considering the earlier fixation and also without considering the revision in the pay-scale. Therefore, by reason of the amendment application the petitioner has made a prayer for quashing of the aforementioned order dated 23.11.2001 which he has brought on record by Annexure-5 to the said amendment application, whereby and whereunder. according to petitioner, an unauthorised deduction of a sum of Rs. 81,632.27 has been ordered to be made (i.e. a sum of Rs. 51.202.46 p. on account of medical advances Rs. 21,557.01 p. towards excess payment and Rs. 8,872.80 p. towards quarter rent and energy charges) without talcing into consideration that the petitioner had submitted his medical bills in adjustment of medical advances which was duly

acknowledged by the Respondents. The petitioner has also prayed in the said amendment application for a direction upon the Respondents to correct the wrong fixation of pension committed by the authorities without considering the enhanced scale and by arbitrarily lowering the same even lower to the earlier fixed pension on the basis of the old scale. The petitioner has stated that a sum of Rs. 21.557.00 has been ordered to be deducted without specifying the details. The petitioner has further stated that in relation to the medical bill of Rs. 51.202.46 p. the respondents had issued a letter on 6.5.1998 (Annexure-6) wherein they had stated that the petitioner had submitted the medical bill etc. for a sum of Rs. 51.202.46 p. and that a sum of Rs. 58.797.54 p. was lying outstanding with him. According to petitioner, this letter proves that the respondents have themselves communicated to the petitioner that medical bills to the extent of Rs. 51,202.46 p. had been submitted by him. So far as the rest amount is concerned, the petitioner has stated that he had deposited the bills and which had been received in the office of the respondent.

8. In this case a counter-affidavit has been filed on behalf of respondent Nos. 5 and 6 who have stated that the full amount of admitted pension and gratuity has been sanctioned vide sanction letter dated 23.11.2001 and that the petitioner''s pension and gratuity has been deposited in the Canara Bank. Patna in the petitioner''s Account No. 5959 by cheque No. 656740 dated 23.11.2001. They have also stated that the GSS amount has also been sanctioned vide letter dated 7.11.2001 and a sum of Rs. 20,466/- has also been deposited in the petitioner''s Account in the Canara Bank vide cheque No. 656747 dated 24.11.2001. They have also stated that the entire admitted leave encashment had also been similarly deposited by cheque No, 656747 dated 24.11.2001 in the Canara Bank Account of the petitioner and the GPF accumulation has also been made by the Deputy Director of Accounts (Sectt), BSEB, Patna vide cheque No. 458013 dated 31.3.1999 for a sum of Rs. 2,38,547/- and also by cheque No. 762272 dated 17.4.2000 for Rs. 37,311/-. According to these respondents the entire admitted amount after legal deduction have already been paid to the petitioner.

9. So far as the deductions made pursuant to the order dated 18.8.2001 is concerned, and which relates to non-passing of the Hindi Noting and Drafting Examinations, these respondents have stated that such deductions are justified and the same has been deducted on account of the petitioner''s excess withdrawal of the amount which he drew in absence of passing Hindi Noting and Drafting Examinations which is compulsory for obtaining increments. They have justified such deduction of the amount of Rs. 6496.09 p. stating that the period after which the petitioner passed the aforesaid examinations is not the subject-matter in the instant case as the petitioner has already been paid due amount after the said period. They have further stated that after creation of the State of Jharkhand and the JSEB, several difficulties have cropped up in relation to the division of assets and liabilities which have not been finalised and it is difficult for them to take any decision in respect of the payment of the arrears.

10. The aforementioned objections on the part of the respondents are rejected outright taking into consideration that the petitioner retired on 30.4.1998. This Court, therefore holds that the creation of the State of Jharkhand or JSEB in this case has no relevance and it is the BSEB alone which is to pay everything to the petitioner, including the interest and costs that was ordered by this Court on 26.3.2001. However, so far as the order dated 18.8.2001, directing the deduction of a sum of Rs. 6496.09 p. from the retiral dues of the petitioner is concerned, the respondents have stated at para 13 of their counter-affidavit that the period after which the petitioner passed the examination is not a subject-matter in the instant case inasmuch the petitioner has already been paid the due amounts after the said period. This is a vague statement.

11. A similar question has arisen before this Court in the case of Baidya Nath Singh v. B.S.E.B. and Ors., in CWJC No. 14/2000 and this Court allowed the writ petition by order dated 13.8.2001 holding that there being no misrepresentation on the part of the employees and annual increments having been released inspite of non-passing of Hindi Noting and Drafting Examinations, that amount can not be recovered. The aforementioned judgment of a learned Single Judge of this Court was passed following the case of Sahib Ram Vs. State of Haryana and Others, . In that view of the matter, the respondents shall reconsider and pass necessary orders within a period of two weeks from the date of passing of this order. The respondents shall also release to the petitioner 10% interest p.a. with effect from the date of his retirement till the date of payment as ordered by this Court on 26.3.2001 together with costs which was assessed at Rs. 1000/- by the said Court.

12. So far as the matter relating to arrears arising out of revision of pension to retired employees is concerned, the respondents are directed to finalise the matter also within the period mentioned above.

13. Let it be recorded that on 3.10.2001 this Court had directed that if it is found that the respondents have not released the retiral benefits in terms with the earlier order of this Court, this Court may initiate suo motu contempt proceeding against the erring officer/ person. The interest and costs have not been paid and the matter relating to revision of pay-scale have not been finalised, this Court takes a serious view of the matter. However, one last opportunity is being given to these respondents to do the needful within the time frame above failing which liberty is given to the petitioner to draw the attention of this Court so that appropriate orders can be passed as per order dated 3.10.2001 stated above. Similarly, the matter relating to wrong fixation of pension shall also be finalised by the respondents within the same period.

14. With the aforesaid observations/ directions, this writ petition is disposed off.

