(2014) 10 JH CK 0015

In the Jharkhand High Court

Case No : WP(S) No. 7166 of 2012

Nitya Nand Sharma — APPELLANT

Vs

The State of Jharkhand — RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Citation : (2015) 144 FLR 907

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Manoj Tondon, Shiv Shankar Bhaia and Kumari Rashmi, Advocate for the Appellant; Ratnakar Bhengra GP-II and Sudershan Srivastava, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.

I.A. No. 6552 of 2013

1. Office orders as contained in Annexures 3 and 4 to the present interlocutory application dated 17.11.2012 and 28.2.2013 are orders of recovery of the amount of Rs. 1,50,542/- and Rs. 3,68,000/- effected against the petitioner, after his retirement. They are also sought to be impugned in the main writ application where the petitioner is aggrieved by an order as contained in Annexure 2 dated 31.10.2012 whereunder a sum of Rs. 3,90,000/- has also been sought to be recovered from his gratuity. Since the aforesaid orders are also adversely affecting the petitioner and are in continuance with the main relief, the proposed amendments are allowed to be incorporated in the main writ application.

2. Let the instant I.A. No. 6552 of 2013 be treated as a part of main writ petition.

3. I.A. No. 6552 of 2013 stands disposed of, accordingly.

W.P. (S) No. 7166 of 2012

4. Heard learned counsel for the parties.

5. The petitioner has retired from the post of Junior Engineer, Minor Irrigation Division, Ranchi, Chaibasa on 31st August, 2009. In a writ petition WP(S) No. 4250/2011 preferred by him for payment of admissible dues the respondents were directed to take a decision on his representation by order dated 13.9.2011 passed by the leaned Single Judge and to pay the legally admissible amount. The contention of the petitioner is that the claim of the petitioner has not yet been decided but by Annexure 2, which is a letter addressed to the Accountant General, Jharkhand by the Executive Engineer, Minor Irrigation Division, Chaibasa dated 31st October, 2012 bearing no. 929, the respondents have chosen to recover an amount of Rs. 3,90,000/- from his gratuity. It is submitted by reference to office orders enclosed to the I.A. No. 6552 of 2013 bearing letter nos. 964 and 123 dated 17.11.2012 and 28.2.2013 that a sum of Rs. 1,50,500/- and a further sum of Rs. 3,68,000/- has also been ordered to be recovered and as such the said orders are also being challenged by the petitioner.

6. Learned counsel for the petitioner has assailed the said order at Annexure-2 and the orders as annexed to the interlocutory application on the ground that the same have been effected without any departmental proceeding or opportunity to show cause to the petitioner. It is submitted that after the retirement of the petitioner no such amount could be recovered without following the procedure laid down under Rule 43(b) of the Jharkhand Pension Rules. It is further submitted that provisional pension of the petitioner has also been stopped w.e.f. July, 2013 itself and the petitioner is facing acute hardship.

7. The respondents have appeared and filed their counter-affidavit. According to them after cadre bifurcation the petitioner joined in the State of Jharkhand at the Minor Irrigation Division, Chaibasa on 26.9.2004. His service book was not received by the said Division till his retirement from his previous place of posting i.e. from the State of Bihar due to non-confirmation or regularization of his absence at several places. The service book of the petitioner was received in Minor Irrigation Division, Chaibasa through special messenger on 10.8.2011. His unaccounted period of absence were regularized by the Government of Jharkhand under different types of leaves applicable. As per the communication received from the Bihar and amount of Rs. 14,42,300/- was found to be standing in his name on account of Pending Stores Account in his name at South Koshi Canal Division, Andhrathari. The petitioner was communicated through letter no. 750 dated 23.9.2010 in respect of the recovery but no communication has been received from the office of the petitioner in this regard. Subsequently, the matter was brought to the knowledge of the Water Resources Department by a letter dated 21.11.2012 to recover the said amount from the dues payable to the petitioner, Annexure-C to the counter-affidavit. It is submitted that a sum of Rs. 9,08,500/- is the part of recovery made from the petitioner in compliance of the departmental order out of total outstanding amount of Rs. 14,42,300/-. Counsel for the respondents, therefore, submitted that the recovery is of an amount

found to be unexplained in respect of the stores, which was in charge of the petitioner at his place of posting at Andhrathari in Bihar. The materials on the store were evaluated by the Department and thereafter the said amount was found to be recoverable from the petitioner, in respect of whom he was also given a notice on 23.9.2010. In such circumstances, according to the respondents, no departmental inquiry is required to be initiated for recovery of the said amount. The petitioner has failed to respond to the notice and the Department had no other option but to recover it from post retirement dues of the petitioner.

8. I have heard learned counsel for the parties and gone through the relevant materials on record including the impugned order as contained in Annexure-2 and the orders challenged by way of I.A. No. 6552 of 2013. It appears that after retirement of the petitioner on 31.8.2009 a notice was issued through letter no. 750 dated 23.9.2010 by the Executive Engineer, Minor Irrigation Division, Chaibasa. Perusal of the said letter indicates that it was addressed to the petitioner with designation retired Junior Engineer, Minor Irrigation Division, Chaibasa. There is no proof of such service of notice upon the petitioner. Even otherwise after the retirement of the petitioner, issuance of such a letter at his official address during his service cannot be treated to be proper service of notice upon him, or show cause against any such proposed recovery. The respondents may have calculated the amount after evaluation of the materials in the stores at Andhrathari at South Koshi Canal Division in Bihar but the recovery that has been affected has been made after retirement of the petitioner. The amount sought to be recovered is Rs. 14,42,000/- approximately from his post retirement dues and, therefore, it entails serious adverse consequences upon his admissible post retirement dues. In such circumstances, the compliance of principle of natural justice is mandatory, which does not seem to have been followed in the present case.

9. In such circumstances, the action of the respondents to undertake such a recovery appears to be violative of the principle of natural justice and arbitrary on that account. Therefore, the part of the order at Annexure-2 in letter no. 929 dated 31.10.2012 and the orders at Annexures 3 and 4 annexed to the I.A. No. 6552 of 2013 whereunder a sum of Rs. 3,90,000/-, 1,50,500/- and Rs. 3,68,000/- have been recovered from the admissible dues of the petitioner cannot be sustained in the eye of law and they are quashed. The respondent/ Department shall take a decision afresh in respect of the recovery of the amount alleged to be found in shortage in the stores at South Koshi Canal Division at Andhrathari in respect of the petitioner after due compliance of the principle of natural justice i.e. issuance of a proper show cause notice upon him and after giving at least one opportunity of hearing to the petitioner. The petitioner is also directed to corporate in any such inquiry or proceeding initiated against him. Let such an exercise be completed within a period of 12 weeks from the date of receipt of a copy of this order by the Competent Authority of the respondent-Department. In the meantime, the admissible provisional pension shall be paid to

the petitioner in accordance with law.

10. This writ petition is allowed in the aforesaid terms.

