(2009) 05 JH CK 0044

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4326 of 2008

Phoolmani Gudiya APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Citation : (2009) 05 JH CK 0044

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Advocate : S.N. Pathak, for the Appellant; Rahul Gupta, J.C. to A.G., for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard Dr. S.N. Pathak, learned Counsel for the petitioner and J.C. to A.G. for the respondents.

2. Petitioner in this writ application has challenged the order dated 28.07.2008 (Annexure-2) whereby the Superintendent of Police (Wireless) had directed to recover an amount of Rs. 50,000/- from the death-cum-retiral benefits of the petitioner''s husband Late Oliver Purti who had died in course of anti naxal operations on 07.09.2008. The recovery was sought to be made on the ground that the deceased had received excess payment by way of salary with effect from 01.014996 and therefore the said amount was recoverable from his account.

3. Besides praying for quashing the impugned order, the petitioner has also prayed for a direction to the respondents to refund the deducted amount and also to fix the family pension on the basis of the amount of last pay drawn by her deceased husband.

4. The challenge to the impugned order has been made on the ground that it is arbitrary, against the provisions of law and is a colourable exercise of power and is violative of the principles of natural justice.

5. Dr. S.N. Pathak, learned Counsel for the petitioner would submit that even if, according to the respondents, the excess payment was drawn by the deceased on account of wrong fixation of his salary ever since 01.01.1996, the same cannot be recovered after lapse of more than 11 years of such wrong fixation and certainly/no such amount from the death-cum-retiral benefits can be recovered without resorting to the proceeding under Rule 43(b) of the Pension Rules. To buttress his argument, learned Counsel places reliance on a Full Bench judgement of this Court in the case of Laxman Prasad Gupta v. State of Jharkhand 2007(4) JLJR 459 and in the case of Smt. Normi Topno v. State of Jharkhand 2007(4) JLJR 466 and the judgement of the Supreme Court in the case of N.D.P. Namboodripad (Dead) by LRs. Vs. Union of India (UOI) and Others, .

6. On the other hand, the stand taken by the respondents in their counter affidavit is that the petitioner''s husband was promoted to the post of Sub-Inspector (Operator) on 01.02.1987 in the Police Radio in the undivided State of Bihar. The Government of Bihar allowed the Central Pay Scales to its employees with effect from 01.01.1996 and accordingly, the pay of the wireless personnel was provisionally revised in the Central Pay Scale with effect from 01.01.1996 and the pay scale of the petitioner''s husband was accordingly revised in the scale of Rs. 5500-175-9000/- and was fixed at Rs. 8,125/- on 01.01.1996. Such fixation was however a provisional fixation subject to verification by the Finance Department of the State Government. Subsequently, on the bifurcation ,of the State of Bihar, the services of the husband of the petitioner was allocated to the State of Jharkhand. Upon receiving his service book from the Government of Bihar, it was forwarded to the Finance Department for final pay verification. Upon verification, the Finance Department had revised the pay scale of the petitioner''s husband fixing it at Rs. 6,275/- in place of Rs. 8,125/- with effect from 01.01.1996 and vide F.D. Issue No. 3031/F dated 31.12.2003 had directed that the excess amount paid to the employee stands to be recovered.

7. From the admitted facts, the pay scale of the deceased husband of the petitioner was fixed by the concerned department and if there was any mistake or error in such fixation, the same is apparently not attributed to any act of fraud or misrepresentation practiced on the part of the employee. Furthermore, even though the error was purported to have been detected upon receipt of the memo of the Finance Department of the State Government way back in 2003, the respondents did not choose either to issue any notice to the deceased or to inform him about the purported error in fixation of his pay and about the excess payment drawn by him. On the contrary, his salary on the basis of the pay fixation made initially, continued to be paid to him even till prior to the date of his death on 07.05.2008.

8. An identical issue was raised before the Full Bench of this Court in the case of Laxman Prasad Gupta (Supra) and Normi Topno (Supra) wherein this Court had observed that the Government has no power to recover the amount paid in

excess, arbitrarily. Such recovery can be made only in accordance with the procedure prescribed under Rule 43(b) of the Government Pension Rules. This Court had further observed that when excess amount received was not on account of misrepresentation, collusion, fraud or negligence of the employees, the same cannot be recovered mechanically behind his back and that too from his retrial benefits.

9. A similar issue was raised in the case of Manju Singh v. State of Jharkhand vide W.P.(S) No. 179 of 2008 in which, by applying the same ratio as laid down in the case of Laxman Prasad Gupta and in the case Normi Topno and also in the case of N.D.P. Namboodripad (Supra), the impugned order of recovery of the purported excess paid amount was quashed. The fact of the present case is fully covered by the judgment of this Court in the case of Manju Singh (Supra). The impugned order for recovery of the purported excess paid amount from the retrial benefits of the deceased husband of the petitioner, is contrary to the provisions of law and procedure and cannot be sustained.

10. I find merit in this application. Accordingly, this writ application is allowed. The impugned order dated 28.07.2008 (Annexure-2) is hereby quashed. The respondents are directed to refund the amount of Rs. 50,000/- which has been deducted from the retrial benefits payable in the account of the deceased husband of the petitioner. The respondents are further directed to fix the amount of the payable family pension on the basis of last pay drawn by the deceased before his death.

With these observation his writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent State.

