
(2012) 05 JH CK 0007

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5524 of 2009

Rabindra Prasad Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2012) 3 JLJR 75

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rohit Roy, for the Appellant;

Judgement

Aparesh Kumar Singh.J.

1. Heard learned counsel for the petitioner as well as learned counsel for the respondents. It has been submitted by the learned counsel appearing on behalf of the petitioner that petitioner has been compelled to move this Court for issuance of direction upon the respondents for fixation of pension of the petitioner on the last pay drawn in the proper scale of pay and release the entire amount of gratuity and leave encashment, which has not been released till date and also for the payment of interest upon the aforesaid amount on account of delayed payment.

2. It has submitted on the part of the petitioner that petitioner had joined service-as Circle Inspector, Kanke Anchal on 20.11.1976 and retired on 30.04.2007 as Assistant Settlement Officer, Dhanbad.

3. The respondents have appeared and filed their counter affidavit inter alia stating that vigilance case has been instituted against the petitioner being vigilance P. S. Case No. 10 of 2001 in which petitioner had been sent to jail on 17.07.2001. The stand of the respondents in their counter affidavits was that the sanction for prosecution against the petitioner had also been granted vide order dated 24.08.2002 by the respondents. The respondents have further stated that

75% of provisional pension has already been sanctioned in favour of the petitioner after obtaining the concurrence of the Finance Department, Government of Jharkhand, Ranchi vide Sanction Order No. 2906/ R dated 17.12.2009 (order contained in Annexure-C to the counter affidavit). Further, it has been stated in respect of the payment relating to the petitioner for grant of full pension, entire amount of gratuity and leave encashment that the matter has been referred to the Finance Department vide U.O.I. No. 36 dated 08.01.2010 for necessary advice in the light of rules and regulations, which was awaited till the time of filing of the said counter affidavit. On the other hand, respondent no. 4-Finance Department has also appeared and filed counter affidavit. In paragraph-8 of the said counter affidavit, it has been clearly stated that it is the responsibility of the Administrative Department and the Finance Department has no role.

4. Learned counsel for the petitioner has submitted that in Special case No. 15 of 2001, cognizance for the offence under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 had been taken against the petitioner and further the said order of cognizance has been quashed by this Court in W.P. (Cr.) No. 194 of 2001 vide order dated 29.03.2012. However, in the said order, it is made clear that it is open for the Court below to proceed against the petitioner after receipt of the sanction order. Learned counsel for the petitioner has also relied upon a decision in a case of Dr. Dudh Nath Pandey Vs. State of Jharkhand & Ors. reported in 2007(4) JCR 1 (Jhr)(FB) and submitted that it clearly lays down that there is no power for the Government to withhold gratuity and pension during the pendency of the departmental proceeding or criminal proceeding. It does not give any power to withhold leave encashment at any stage either prior to the proceeding or after conclusion of the proceeding. Learned counsel for the petitioner has further submitted that in this case, order of cognizance has been quashed by this Court itself vide order dated 29.03.2012 in W.P. (Cr.) No. 194 of 2001. In view of the aforesaid facts and circumstances, learned counsel for the petitioner has submitted that petitioner would be satisfied, if liberty is granted to him to file a representation before the competent authority for the payment of full pension, gratuity and leave encashment in the light of the judgment referred herein above.

5. In the facts and circumstances of the case, this writ petition is disposed of with liberty to the petitioner to file a representation alongwith a copy of this order before the respondent no. 3, the Secretary, Department of Land Revenue, Jharkhand, Ranchi containing all necessary facts including a copy of the judgment referred hereinabove and also a copy of the order of W.P.(Cr.) No. 194 of 2001 within a period of two weeks. In case, such representation is filed before the respondent no. 3, the Secretary, Department of Land Revenue, Jharkhand, Ranchi, he would consider the same in accordance with law and pass a speaking and reasoned order within a period of six weeks thereafter and the same shall be communicated to the petitioner.

6. It is made clear that if the petitioner's claim is found genuine and he is entitled to any of the dues legally admissible to him under the heads of pension, gratuity and leave encashment, the same should be paid within six weeks thereafter with statutory interest, if any. With the aforesaid observations and directions, this writ petition stands disposed of.