
(2019) 08 JH CK 0040

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3123 Of 2012

Ranjan Kishore Sharma And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Citation : (2019) 08 JH CK 0040

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Niraj Kishore, Shweta Singh

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Niraj Kishore, learned counsel for the petitioners and Mrs. Shweta Singh, learned A.C. to S.C. (L&C)-II for the respondents.

I.A. No. 5386 of 2017

2. The present interlocutory application has been filed for substitution of the legal heirs of the petitioner who died on 02.02.2015.

3. The name of the legal heirs/successors of the petitioner is provided in paragraph 4 of the said interlocutory application.

4. For the reasons assigned in the interlocutory application, the interlocutory application is allowed.

5. The petitioner is directed to make out necessary correction in the cause title in course of the day.

6. Accordingly, the I.A. No. 5386 of 2017 is allowed and disposed of.

W.P.(S) No. 3123 of 2012

7. After the death of the petitioner, the petitioner is substituted by the legal heirs/ successors of the petitioner namely (i) Ranjan Kishore Sharma (ii) Surendra Sharma & (iii) Sunaina Devi.

8. The petitioners preferred this writ petition for payment of retiral dues and for payment of 1st and 2nd Assured Career Progression Scheme w.e.f. 17.11.2009.

9. The mother of the petitioners was appointed in the year 1974 as Lower Division Clerk on ad-hoc basis. The mother of the petitioners was provided 1st time bound promotion w.e.f. 26.12.1984 and by order dated 24.06.1987, the mother of the petitioners was appointed on vacant and sanctioned post of clerk. It is stated that the time bound promotion was directed to be cancelled and the excess amount was also directed to be recovered. The petitioner moved before this Court in C.W.J.C. No. 2272 of 1991 (R) and the said writ petition was disposed of with the direction that no recovery shall be made from the petitioner. The mother of petitioners retired on 31.07.2011. It is stated that the petitioner only received Group Insurance and General Provident Fund amount, but the rest of the retiral benefits has not been released.

10. On the other hand, learned counsel for the respondents submits that Earned Leave equivalent to 300 days' has been sanctioned by letter dated 19.08.2011. Group insurance amounting to Rs. 1,73,381 has also been sanctioned by letter dated 09.09.2011. Arrears of provisional pension amounting to Rs. 1,26,512/- has also been sanctioned vide memo dated 13.04.2012. She further submits that the gratuity has not been paid as yet to the mother of the petitioners as she has not furnished no dues certificate. She further submits that so far as benefit of 1st and 2nd A.C.P. is concerned as she had not passed the accounts examination and that's why she was not entitled to receive the same. Exemption from passing the accounts examination has been granted to her w.e.f. 17.11.2009 and she became entitled to get 1st, 2nd and 3rd A.C.P. w.e.f. 17.11.2009. She further submits that the excess amount paid to the petitioner of Rs. 3,64,533/- which the petitioner has received on account of erroneous grant for benefit of 1st, and 2nd ACP has been decided to be recovered from the gratuity of the petitioner and the petitioner received a sum of Rs. 3,46,102/- under the head of GPF.

11. In view of the facts that the grievances of the petitioners so far as the retiral benefits is concerned has been set at rest. Now payment of gratuity and final pension has to be considered.

12. As there is no misrepresentation on behalf of the petitioner and the authorities as it their own wisdom has granted 1st and 2nd A.C.P. and in view of the law laid down by the Hon'ble Supreme Court in the case of State of Punjab & Ors. Etc. Vs. Rafique Masih etc. reported in 2015 1 JLJR(SC) 323, the recovery at this stage is illegal.

13. The petitioners are directed to file the fresh representation before the authorities concerned, annexing a copy of the judgment of the Hon'ble Supreme Court rendered in the case of Rafique Masih (supra), within four weeks from

today and the authorities concerned will take into consideration of the judgment of the Hon'ble Supreme Court and decide the matter as to whether the recovery directed to be made from the petitioner is correct or not.

14. It goes without saying that if they come to the conclusion in view of the judgment passed by Hon'ble Supreme Court, the recovery is bad in law they will release the recovered amount in favour of the petitioners, if already recovered, within a period of four weeks thereafter.

15. So far as payment of gratuity is concerned, the authority will also take proper steps so that the benefits of gratuity and final pension extended to the petitioners within aforesaid period.

16. With the aforesaid directions and observations, the writ petition stands allowed and disposed of.