(2010) 03 JH CK 0036

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6752 of 2007

Rishi Kumar Ekka APPELLANT

Vs

New India Assurance Co. Ltd. and Others RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Citation : (2011) 1 LLJ 653

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties.

The Petitioner in this writ application has prayed for a direction commanding upon the Respondents to pay the Petitioner''s retiral benefits to the extent of Rs. 1,32,190 which, according to the Petitioner, has been illegally withheld by the Respondents.

2. As it appears from the admitted facts of the Petitioner''s case, the Petitioner was under the employment of Respondent-New India Assurance Company Ltd. and he retired from the post of Deputy Manager by opting for voluntary retirement under the scheme floated by the Respondent-company.

3. Though upon his retirement, his retiral benefits was paid to him but the aforesaid sum of Rs. 1,32,190 has been withheld and vide the impugned letter, it was communicated to him that the amount is being withheld on account of Audit Queries, which has not been replied by the Petitioner.

4. Learned Counsel for the Petitioner, argues that no such ground for withholding the retiral dues of the Petitioner can legally be taken by the Respondent-company, as because the reply to the Audit Queries purported to have been raised in 1997, has been sought from the Petitioner after the acceptance of his voluntary retirement i.e. after more than seven years. Learned Counsel argues further that the withholding of the amount of retiral benefits could have been

resorted to only upon a finding that the Petitioner is guilty or any act of misconduct as per the Standing Order and only after conducting enquiry on such issue. There being no allegation that the amount withheld, was either embezzled or misappropriated by the Petitioner, such amount from the retiral dues could not be withheld merely because the Petitioner has not offered replies to the Audit Queries. Learned Counsel adds further that even as per the established practice the Audit Queries are to be answered by the in-charge of the, concerned department and not the individual incumbent. Having accepted the Petitioner''s voluntary retirement and having separated the Petitioner from employment, even if such queries is to be replied, the same ought to have been sought from the Petitioner''s successor in office and not from the Petitioner.

5. Counsel for the Respondents submits with reference to the averments contained in the counter-affidavit that the amount, as observed above, has been withheld from the Petitioner''s retiral benefits on account of his failure to answer the Audit Queries.

6. Upon hearing counsel for the parties and on going through the documents on record, I find force in the arguments advanced by the counsel for the Petitioner. The withholding of the amount from the Petitioner''s retiral benefits, in the light of the facts and circumstances as detailed above, cannot be legally acceptable particularly, in view of the fact that there is no charge or allegation that the amount withheld, has been misappropriated by the Petitioner. The Audit Queries, as explained by the counsel for the Petitioner, has to be answered by the in-charge officer of the department concerned and since the Petitioner has already retired from service, such onus would now lie upon his successor in office.

7. In the light of the above facts and circumstances, I find merit in this writ application and the same is allowed. The concerned authorities of the Respondents are directed to release and pay the Petitioner the withheld amount of Rs. 1,32,190 within three months from the date of this order. In the event of failure to pay the amount within the period stipulated, such amount shall carry interest @ 6% payable from the date of expiry of the stipulated period till final judgment.

8. With these observations, this writ application is disposed of. Let a copy of this order be given to the counsel for the Respondents.