(2009) 03 JH CK 0053

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5643 of 2005

Sanch Lal Ram APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Pension Rules — Rule 43(B)

Citation : (2009) 57 BLJR 1976

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : Ayush Aditya and Vinod Kumar, for the Appellant; J.C. to G.A., for the Respondent

Judgement

D.G.R. Patnaik, J.—Prayer in this writ application is for a direction to the respondents to forthwith fix and finalize the pension, gratuity etc. of the petitioner, who was posted in the post of Junior Engineer, Dumri Section of Chainpur Sub Division under Gumla Works Division of Rural Engineering, Organisation, since the date after the petitioner had retired on 31.01.1997.

A further prayer has been made for quashing the letter dated 04.08.2005 issued vide Memo No. 565 (Annexure-6) by the Executive Engineer (Respondent No. 4) whereby a sum of Rs. 5,43,424.53 has been directed to be deducted by way of adjustment against the retiral dues payable to him.

2. A counter affidavit has been filed on behalf of the respondent State.

3. Heard learned Counsel for the petitioner and learned Counsel for the respondent State.

4. Facts of the petitioner''s case in brief are that he retired on the post of Junior Engineer, Dumri Section of Chainpur Sub Division of the Rural Engineering Organization which was under the control of the respondent No. 4 namely the Executive Engineer, Rural Engineering Organization Works Division, Gumla. Prior to his retirement, no departmental proceeding on any charge whatsoever was

initiated against him. At the time of his retirement, the petitioner was given "no dues certificate" from all the concerned departments which he had submitted before the concerned authorities of the respondents for the purpose of enabling assessment of the retiral dues payable to him and also for assessing the amount of pension and gratuity. The provisional pension fixed, as part of the retiral benefits, was paid to him and the respondents used to pay the provisional pension every month to the petitioner commencing from the year 1997 till 2002.

Thereafter, the respondents had abruptly suspended the payment of pension to the petitioner since June, 2002 and two years later, the payment of pension was resumed but again such payment was stopped since the month of October, 2004. In the meanwhile, his pay scale on the post of Assistant Engineer was also fixed on the basis of the annual increment.

5. On the payment of pension being stopped, the petitioner submitted his representation demanding the release of payment along with all retiral dues including payment of pension and also final fixation of the pension on the basis of the pay scale on the promotional post of Assistant Engineer.

Instead of releasing the payments, the respondent No. 2 by letter dated 27.01.2005 (Annexure-3) informed the petitioner that a sum of Rs. 2,21,996.07 which was purportedly received by the petitioner as advance payment for discharge of his duties, has not been accounted for as yet by him and he was directed to pay the same along with interest @ 18% and the total demand was made for payment of Rs. 5,41,674.71.

6. The grievance of the petitioner is that such demand for payment of a huge amount and stoppage of the payment of pension and the retiral dues, has been made even without affording him any opportunity of being heard and even in absence of any proceeding under Rule 43(B) of the Pension Rules. Learned Counsel would explain that admittedly the petitioner had handed over charge of his office by submitting all the measurement books, accounts etc and had obtained the "no dues certificate" from the respondent No. 4 who was his controlling authority, way back on 28.01.1999. It was only thereafter, that the respondents had assessed the amount of retiral dues payable to him and by fixing provisional pension had also released the provisional pension amount to him every month. Yet, the respondents would now want to retract from their earlier stand by raising a dispute that too on the basis of suspicion that the petitioner had not accounted for the advance amount obtained by him and that the "no dues certificates" appear to be forged and fabricated.

7. Learned Counsel for the respondent State, by referring to the averments contained in the counter affidavit, would explain that though the amount of retiral dues including pension was assessed on the basis of the "no dues certificate" produced by the petitioner, but in course of verification of the documents including the statement of accounts and the measurement books etc., it was detected that the advance amount which the petitioner had obtained was

not satisfactorily accounted for. This created a genuine suspicion that the petitioner may have obtained his "no dues certificate" by suppressing material facts. Such detection, according to the learned Counsel, was made some time in the year 1997 itself i.e. during the period the petitioner was yet in service.

8. From the facts stated by the learned Counsel for the respondents, it appears that admittedly the petitioner had submitted his no dues certificate which was issued to him by his controlling authority. A presumption therefore, is that such certificate was issued by the controlling authority only after being satisfied that the petitioner does not owe any money or any dues whatsoever to the Establishment. Even taking into consideration the plea taken in the counter affidavit of the respondents that the verification of the accounts books had given a reasonable ground for raising suspicion against the petitioner that the petitioner may no have fully accounted for the advance amount received by him, yet admittedly, no further enquiry into the matter was conducted nor was the matter taken to its logical conclusion by holding the petitioner guilty for any misconduct. Admittedly no proceeding under Rule 43(B) of the Pension Rules was initiated against the petitioner nor has the petitioner been specifically charged of practicing any fraud or misrepresentation on the respondent authorities.

9. Even if some suspicion was raised on detection of certain errors, it is not understood as to why, in the first instance, payment was released to the petitioner by way of retrial benefits and such amount used to be paid by way of provisional pension even up to the year 2002 and after an interval of about two years, such payment was again resumed in the year 2004.

10. From the above facts and circumstances, it does appear that the conduct of the respondents does not reflect transparency. The respondents have not adequately answered as to why the claim of the petitioner for payment of his retrial dues has been abruptly stopped after having allowed such claim for a considerable period post retirement.

11. Even if, as submitted by the learned Counsel for the respondents, the payment was stopped on the basis of the Auditor''s objection, no such order for recovery of any amount can be made from the petitioner''s retrial benefits except by the adoption of the procedure laid down under Rule 43(B) of the Pension Rules which, in the instance case, has not been adopted at all. This principle of law has by now well settled by a catena of decisions of this Court.

12. In the light of the discussions made above, I find merit in this writ application. Accordingly, the same is allowed. The impugned order vide Memo No. 565 dated 04.08.2005 (Annexure-6), which has apparently been passed more than after 8 years from retirement from service, is hereby quashed. The respondents are directed to fix the final pension of the petitioner on the basis of the last pay payable to him after assessing such payment in accordance with the pay scale on the promotional post of Assistant Engineer. The respondents shall also pay the petitioner the arrears of pension which has been with-held, within

two months from the date of this order, together with statutory interest thereon.

13. With the above observations, this writ application is disposed of.

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

