(2014) 11 JH CK 0018

In the Jharkhand High Court

Case No : WP(S) No. 7511 of 2011

Saroj Kumar Sarkhel APPELLANT

Vs

The State of Jharkhand RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2014) 11 JH CK 0018

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : N.P. Choudhary, Advocate for the Appellant; Baleshwar Yadav, JC to SC I, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the petitioner.

2. The petitioner is aggrieved by the order dated 17.10.2011 passed by the Executive Officer, Nagar Panchayat, Jamtara, respondent No. 4, whereunder an amount of Rs. 1,51,969/- has been ordered to be recovered from the petitioner as excess payment and his claim for payment of retiral dues has been rejected. He has also made a prayer for payment of gratuity amount sanctioned on 31.1.2010 vide Annexure 4 after deduction of a sum of Rs. 1.00 lac, which was earlier paid in advance at the time of his retirement. He has also made a prayer for fixation and payment of pension along with its arrears, leave encashment amount, dearness allowance and difference of salary from 1.1.2006 till his retirement from the post of Head Clerk cum Accountant, Nagar Panchayat, Jamtara.

3. It appears that the petitioner had earlier approached this Court in WP(S) No. 3215/2011 with a prayer for payment of post retirement dues. The said writ petition was disposed of on 16.8.2011 by directing the respondent No. 4 to take a decision on the representation of the petitioner within stipulated time. Thereafter the order at Annexure 3 has been passed.

4. The respondents have appeared and filed their counter affidavit taking a stand

that as per the letter of the Government of Bihar dated 9.2.1989, the amount of gratuity payable to a retired employee of Municipality would be calculated in a particular manner with upper limit fixed at Rs. 50,000/-. As such, the petitioner is only entitled to Rs. 50,000/- as gratuity. It has been stated that the order at Annexure-4 for payment of enhanced amount of gratuity to the tune of Rs. 2,76,343/- was illegally issued by the then Executive Officer, Nagar Panchayat, Jamtara. The petitioner has also obtained a cheque of Rs. 1.00 lac dated 29.1.2010 against his gratuity two days prior to his retirement without approval of the Board of Commissioner. For this act the Executive Officer, Jamtara was also asked to submit explanation. It is the categorical statement of the respondents that the petitioner has never opted for pension within 90 days of publication of Bihar Municipal Officers and Servants Pension Rules, 1987, particularly Rule 4(i) thereof. They questioned the document at Annexure 6, which the petitioner claimed to be option form exercised by him to avail of pension. It is their contention that only those who have submitted their options in terms of Rule, would be treated to have come into the pension scheme and others would be treated to have continued under the existing contributory provident fund scheme. The petitioner has already withdrawn the entire provident fund amount totaling Rs. 90,649/- from the concerned office at Jamatra. According to the respondents, there is no provision for leave encashment for a Nagar Panchayat employee but the petitioner had illegally withdrawn a sum of Rs. 1,16,100/- fifteen months prior to his retirement, which is recoverable from him. As per notification No. 1591 dated 16.5.2011 of the Urban Development Department, an employee would be entitled to financial benefit of 6th Pay Revision w.e.f. 1.4.2010 while the petitioner had already retired w.e.f. 31.1.2010.

5. Based upon these assertions, it is the stand of the respondents that the claim of the petitioner has rightly been rejected and a sum of Rs. 1,51,969/-, which was illegally withdrawn by the petitioner, has been ordered to be recovered.

6. Counsel for the petitioner has submitted that in the case of Amir Ali vs. State of Bihar and others, CWJC No. 1632/2000(P) vide judgment dated 21.1.2003, Annexure-7, the respondent-Pakur Municipality were directed to release the pension amount as also the earned leave amount. The Letters Patent Appeal to challenge the same was also dismissed.

7. The respondents replied to the averments made in respect of the said judgment at para 12 in the writ petition by stating at para 17 of the counter affidavit that the facts of the said case are different and the judgment was per in curium because the proper law was not placed before the Hon''ble Court.

8. I have heard learned counsel for the parties and gone through the relevant materials on records. At the outset it is to be observed that so far as the claim for pension is concerned, as per the Rule, 1987 an option was to be exercised within 90 days in the prescribed form by the employee to the head of the office to come within the scheme of Provident Fund Rules, otherwise it would be

deemed that they have continued in the existing Contributory Provident Fund Scheme. It appears from Annexure-6, the authenticity of which has been questioned by the respondents that such option was not exercised in the prescribed form at the relevant time. No reliance can be placed upon Annexure 6 to say that petitioner has duly opted for the pension scheme. Therefore, the reliance of the petitioner upon the judgment passed in the case of Amir Ali (supra) would also be of no help to him as the compliance of Rule 4 does not seem to have been made out by the petitioner.

9. The petitioner also appears to have availed an amount of Rs. 1,16,100/- as earned leave encashment even prior to his retirement, though no rules have been shown on the part of the petitioner that the employee of the Corporation were entitled to leave encashment amount. The respondents have also questioned grant of payment of Rs. 1.00 lac of gratuity as contrary to the decision of the Urban Development Department dated 9.2.1989. It, therefore, appears that as per the Rule, to which the petitioner is subjected, he was not entitled to the amount of gratuity more than Rs. 50,000/-. The petitioner, therefore, appears to be liable to refund the amount of Rs. 1,16,100/- which has been drawn as leave encashment even prior to his retirement. A sum of Rs. 50,000/-, more than the admissible amount of gratuity, also appears to be recovered rightly as held by the respondent No. 4 in the impugned order dated 17.10.2011.

10. Apart from that, since the petitioner has retired prior to giving effect of the monetary benefit of the 6th Pay Revision i.e. 1.4.2010 in terms of the Urban Development Department communication dated 16.5.2011, any benefit on that count would also not be admissible to the petitioner.

11. In totality of the aforesaid facts and reasons, as noticed hereinabove, the impugned order does not appear to suffer from any illegality or perversity.

12. No relief can be granted to the petitioner. This writ petition is, accordingly, dismissed.