

(2014) 12 JH CK 0101
In the Jharkhand High Court
Case No : W.P. (S) No. 1566 of 2010

Shamim Ahmad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2015) 1 JLJR 481

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : A.K. Sahani, Advocates for the Appellant; Ananda Sen, Advocates for the Respondent

Judgement

Sujit Narayan Prasad, J.—The petitioner has prayed for payment of benefit of voluntary retirement scheme including, ex-gratia payment, pension, gratuity, leave salary, arrears falling under the provisions of National Coal Wage Agreement-VIII and other benefits legally payable to the petitioner with statutory and penal interest @ 18% per annum. Heard the parties and perused the documents on record.

2. The case of the petitioner is that the petitioner was initially appointed on 31st January, 1973 as Security Guard. He was promoted to the post of Armed Guard in the year 1981 and thereafter as Havildar in the year 1983. The petitioner, thereafter, was promoted to the post of Assistant Security Sub-Inspector in the year 2003 and was also promoted to the post of Security Sub-Inspector in the year 2006.

3. The respondents came with one scheme known as Voluntary Retirement Scheme. The petitioner, in terms of the said Scheme, had made an application for retirement under Voluntary Retirement Scheme and accordingly the authorities have issued an order duly been signed on 16.9.2009 stating therein that the petitioner will retire from service of the company under voluntary retirement scheme w.e.f. 30.9.2009. His service particulars and details such as

pending disciplinary case, outstanding due/advance etc. were to be meticulously checked/verified before he was relieved from the company.

4. Soon after receipt of the said letter, action was taken for forwarding the claim under CMPF of the petitioner and complete in all respect enabling the CMPF Department to settle quickly. The identity card of the petitioner was directed to be segregated and kept separately with necessary remarks and also to maintain a register indicating the details of VRS as already requested, monthly report in the relevant proforma to be sent to the office in time regularly. This letter was issued with the approval of the competent authority.

5. The authorities, thereafter, issued another office order duly been signed on 23.9.2009 which has been issued in pursuance of the order dated 16.9.2009.

6. The content of the letter dated 23.9.2009 is being quoted herein below:--

"In pursuance of office order No. GM (KTA)/PS/VRS/09/4064 dated 16.9.2009 Sri Shamim Ahmed, SSI of G.M. Unit, Kathara who has applied for retirement under VRS has been approved by the GM (KTA), Kathara and accordingly he will retire from the service under VRS w.e.f. The F/n of 1.10.09. Accordingly his name will be struck off there all of G.M. (KTA) office, Kathara w.e.f. The F/n of 1.10.09 is hereby advised to submit the no claim certificate duly furnished by all sectional heads of G.M, Unit (KTA), Kathara for terminal benefit bill. He is also advised to surrender his Identity card, photo medical card and coal card, etc. to this Office for record."

7. The petitioner, thereafter has submitted all required documents for getting the terminal benefit in pursuance of the order dated 23.9.2009. The grievance of the petitioner is that the authorities have not paid gratuity and other retiral dues in spite of the fact that his VRS has been accepted by the competent authority.

8. The petitioner has also stated that while he was in service, memorandum of charge was served on 20.9.2006 wherein the charge has been levelled that on 16.9.2006 when he was in the night shift duty and patrolling at Religare Project, the thieves stolen the trailing cable of I DM 750 drill and that although he attended the office but did not attend the patrolling duty at night in spite of direction of the competent authority. The submission of the petitioner is that when the VRS has duly been accepted by the respondent-management on 16.9.2009 the authority of the management is duty bound to release all the terminal benefits in favour of the petitioner, but without any rhyme or reason payment of the same has not been made to the petitioner as yet.

9. The respondents have filed counter affidavit controverting the statements made in the petition. However, the claim of retirement benefits of the petitioner under VRS has not been disputed. Reference has been made in the counter affidavit that a memorandum of charge has been issued to the petitioner on 20th September, 2006.

10. While the case was heard on earlier occasion, this Court has passed an order

dated 30.1.2012 which is reproduced hereinbelow:--

"Heard learned counsel for the petitioner and learned counsel appearing on behalf of Respondents.

Although, counter affidavit has been filed on behalf of the respondent Nos. 1 to 5 wherein it has been stated that on account of pendency of proceeding against the petitioner his retiral dues including the V.R.S. amount has been withheld, it is not clear from the counter affidavit that whether the respondent could withhold all the retiral dues payable to the employee in case the inquiry is pending against him or only some of his retiral dues can be withheld.

Respondents are, therefore, directed to come out with a clear affidavit stating the rule position as well as indicating categorically, which are the amount that can be with held in case inquiry is pending against the petitioner.

In that view of the matter, list this case after two weeks."

11. The respondent-Management has not brought on record any rule disentitling the petitioner for. receiving terminal benefits on the ground of continuing departmental proceeding i.e. after superannuation including the retirement under VRS on 23.9.2009. The respondents have filed one supplementary counter affidavit wherein at para-7 and para-8 they have stated as follows:--

"7. That it is stated that there is no provision in the certified standing order of the company to continue departmental proceeding after superannuation including the retirement under VR Scheme. In fact, there is no such stipulation even in the relevant VR scheme.

8. That there is also no provision either in the certified standing order or in the relevant VR Scheme to withhold the retiral dues including VRS amount in the event of retirement and pendency of departmental enquiry."

12. Thus, the management has stated in specific term by way of filing supplementary counter affidavit that there is no provision under the certified standing order to withhold the retiral dues including VRS amount in the event of retirement and pendency of departmental proceeding.

13. After hearing the parties, the admitted position is that the petitioner, under a specific scheme, made application for separation of voluntary retirement scheme on the ground of his personal problem which was duly accepted by the competent authority on 23.9.2009. The respondent has specifically stated that there is no provision under the certified standing order to conclude the departmental proceeding even after separation under the normal purposes or on voluntary retirement scheme. There is also no provision to withhold the payment of benefit under VRS and other retiral dues in the garb of a proceeding initiated in the year 2006.

14. In that view of the matter, this writ petition is disposed of directing the General Manager, Kathara. Area, Central Coalfields Ltd., Bokaro-respondent No. 5

to release the legally admissible dues in favour of the petitioner within a reasonable period, preferably within a period of six weeks from the date of receipt/production of a copy of this order. If the respondents fail to pay the legally admissible dues to the petitioner within the stipulated period, as indicated above, the petitioner will be entitled to get statutory interest @ 10% on the admissible dues to be paid to the petitioner till the final payment.