

(2012) 09 JH CK 0188
In the Jharkhand High Court
Case No : WP (S) No. 369 of 2009

Shashank Shekhar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Citation : (2012) 4 JLJR 551

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : S.K. Singh, for the Appellant; S. Srivastava, for the Respondent

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner had preferred this writ petition for the following reliefs:

(i) For quashing the office order as contained in Letter No. 3214 dated 13.11.2003 (Annexure-2) issued under the signature of respondent no. 3, whereby and whereunder sanction has been accorded for payment of only 90% pension and gratuity on the ground of pending charges.

(ii) For payment of arrears of differential salary and other monetary benefits against the grant of first time bound promotion and second time bound promotion vide order dated 1st August, 2006.

(iii) For a direction upon the respondents to pay the differential salary and other monetary benefits in lieu of grant of ACP vide order dated 19th October, 2005 (Annexure-4) w.e.f. 9.8.1999 till the date of his retirement 30th September, 2001.

(iv) For a direction upon the respondents to grant 100% pension and gratuity in revised pay scale in terms of the law laid down in the case of Dr. Dudh Nath Pandey Vs. State of Jharkhand & ors., reported in 2007(4) JCR 1(Jhr.) (FB) along with interest.

(v) For payment of differential salary for the period of suspension when he was in

custody w.e.f. July, 2001 to September, 2001 amounting to Rs. 48,369/-.

(vi) For a direction upon the Provident Fund Officer to recalculate the GPF and pay the differential amount of Rs. 2,31,176/- along with statutory interest.

2. However, counsel for petitioner at the outset seeks to confine his prayer to the reliefs as contained in prayer nos. (i),(iv),(v) and (vi). According to the learned counsel for the petitioner, the reliefs prayed in prayer nos. (ii) and (iii) have already been granted during pendency of the writ petition.

3. Learned counsel for the petitioner submitted that the petitioner was working as Block Development Officer, Kuru at the relevant time in 2001 when a raid was conducted in his office and he was arrested with another employee on the ground of illegal gratification of Rs. 2000/- from a petty contractor. A criminal case was instituted being Vigilance P.S. Case No. 14/2001 and the petitioner was arrested on the same day. He was granted bail subsequently on 25th September, 2001 by order of this Court before the date of his superannuation i.e. on 30th September, 2001. The petitioner moved this Court earlier in WPS No. 381/2003 for payment of post retirement benefits, which was disposed of vide Annexure 1, the order dated 3rd September, 2003 directing the authorities to determine the claim of the petitioner and pay the admitted retirement benefits after finalization of pension and gratuity and if there is no other impediment, pay the admitted dues, if found payable, within a period of three months from the date of said representation, failing which the respondents will be liable to pay interest.

4. Learned counsel for the petitioner submits that the impugned order as contained in Annexure 2, vide letter dated 3214 dated 13th November, 2003, issued under the signature of Deputy Secretary, Agriculture and Sugarcane Department, Government of Jharkhand, has been served upon the petitioner whereby on the ground of pendency of charges, 90% pension and gratuity have already been sanctioned to be paid. Learned counsel for the petitioner submits that there is no departmental proceeding initiated or pending against him and even after his retirement no proceeding under Jharkhand pension Rules has been initiated either under Rule 43(b) or 149 of the Jharkhand Pension Rules. Therefore, it is submitted that the impugned order is in the teeth of the judgment in the case of Dr. Dudh Nath Pandey (supra). Counsel for the petitioner submits that as per ratio laid down by the Full Bench of this Court in the aforesaid Dr. Dudh Nath Pandey's case (supra), withholding of pension cannot be contemplated under the powers conferred under Rule 43(b) of the Act during pendency of judicial or departmental proceeding, which contemplates such power only when a pensioner is found guilty of grave misconduct in those proceedings. Learned counsel for the petitioner further submits that the respondents are also required to be directed to make full payment of the pension and gratuity of the petitioner on the revised pay scale. It is further submitted that from the affidavit of the Provident Fund Officer itself it appears in para 10 to 12 that the petitioner has not been paid the full GPF amount along with statutory admissible interest till date and only six month's interest has been paid.

5. Counsel for the respondent-State, on the other hand, submits that no counter affidavit has been filed on behalf of the respondent-State, although a counter affidavit has been filed on behalf of the Provident Fund Officer. However, counsel for the respondent-State is not in a position to dispute the legal position as laid down by the Full Bench of this Court in the case of Dr. Dudh Nath Pandey (supra) wherein it has been held that the pension and gratuity amount of the pensioner can only be withheld upon determination of guilt of the pensioner in a judicial or departmental proceeding under Rule 43(b) of the Rules.

6. Learned counsel for the respondents, however, has sought further time to file a counter affidavit. Since the case has already been admitted for hearing and it relates to post retirement benefits of a retired employee and the issue involved in the writ petition is purely legal, it is not desirable to adjourn the case further.

7. I have heard learned counsel for the parties and gone thorough the records of the case including the impugned order. By the order dated 13.11.2003, 90% of the pension/gratuity amount have been provisionally fixed in respect of the petitioner and the documents have been forwarded for issuing of authority letter to the office of the Accountant General. It does not appear from the reading of the impugned order that any specific order refusing or withholding 10% of the gratuity amount has been passed under the Jharkhand Pension Rules. The relevant paragraphs nos. 19 to 21 of the judgment of the Full Bench in the case of Dr. Dudh Nath Pandey (supra), relied upon by the petitioner, are quoted herein-below:

19. As indicated above, that Rule 43(b) does not contemplate the power to withhold the pension etc. during the pendency of judicial proceeding or departmental proceeding. It contemplates such power only when that pensioner has been found guilty of grave misconduct in those proceeding. Therefore, Rule 43(b) would not apply in the instant case.

20. It is also to be noticed that Rule 43(b) is relating to withholding of the pension or any part of it. Leave encashment is not covered under Rule 43(b). As such there is no power given to the State Government to withhold the leave encashment under Rule 43(b) either during the pendency of the proceeding or after conclusion of the proceedings.

21. Therefore, we are to hold while answering the first question that the Government has no power to withhold pension or gratuity on the ground of pendency of judicial or departmental proceedings and there is no power at all for the State Government to withhold the leave encashment under Rule 43(b) at any stage.

8. From the facts stated on behalf of the petitioner, it appears that no departmental proceeding or any proceeding under the Jharkhand Pension Rules have been initiated against the petitioner although a vigilance case being Vigilance P.S. Case No. 14/2001 for certain criminal charges is pending against the petitioner. However, the trial of the said vigilance case has also not been

concluded till date, as per submission of the learned counsel for the petitioner.

9. In the circumstances the petitioner is directed to approach the respondent no. 2, Secretary, Department of Agriculture, Government of Jharkhand within a period of three weeks for redressal of his grievances in relation to payment of 10% of the withheld pension and gratuity amount. The petitioner is also allowed liberty to file a representation before the District Provident Fund Officer, Lohardaga for redressal of his grievances in relation to payment of remaining GPF amount in view of stand taken by the Provident Fund Officer in the affidavit filed on their behalf. The said representation should also contain the relevant fact along with supporting documents. In case such a representation is preferred before the Secretary, Agriculture Department, Government of Jharkhand, respondent no. 2, he shall consider the same and pass a reasoned and speaking order also taking into account the Full Bench judgment of this Court in the case of Dr. Dudh Nath Pandey (supra) and the stand of the petitioner that he has not been found guilty in judicial proceeding or departmental proceeding, within a period of 12 weeks from the date of receipt of representation, which shall also be communicated to the petitioner. If the representation before the District Provident Fund Officer, Lohardaga is filed in respect of claim of outstanding GPF along with statutory interest, he shall also consider the same in accordance with law and pass a reasoned and speaking order within a period of 12 weeks, which shall also be communicated to the petitioner.

10. However, learned counsel for the petitioner also relies upon a circular dated 9th October, 1973 for payment of interest on delayed payment of pension and death cum retiral benefits. It will be open to the petitioner to rely upon the same in his representation before the respondent no. 2. It is needless to say that if the claim of the petitioner is found genuine and otherwise legally admissible and he is entitled to payment of the remaining post retirement dues as aforesaid, the same shall be paid within a period of six weeks thereafter respectively by the concerned authority. With the aforesaid observation and direction, this writ petition stands disposed of.