

(2013) 06 JH CK 0071

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3638 of 2005

Shiv Nath Prasad

APPELLANT

Vs

Jharkhand State Electricity Board, Supply Division, Secretary,
Jharkhand State Electricity Board, Electricity Superintending
Engineer, Electric Supply Division and The Director Personnel,
Jharkhand State Electricity Board

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Citation : (2014) 1 AJR 14 : (2013) 3 JLJR 372

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : R.P. Gupta, for the Appellant; Rajan Raj, Advocate and Mr. Rohit, Advocate for J.S.E.B., for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court seeking quashing of order dated 04.06.2004 whereby it has been ordered that a sum of Rs. 1,03,194.37/- would be deducted from his gratuity amount. The brief facts of the case are that, the petitioner was initially appointed on the post of Clerk (SDC) on 25.01.1962 and he was granted senior grade on the post of Correspondence Clerk on 27.05.1975. He was granted selection grade and super-selection grade on the post of Head-Clerk on 01.08.1988 and 03.04.1994 respectively. The petitioner superannuated from service on 30.04.2003. It appears that even after retirement, when the pensionary benefits of the petitioner were not granted to him, he moved the High Court in W.P.(S) No. 5444 of 2003 which was disposed of by order dated 13.11.2003 with a direction to the Board to release the entire dues legally payable to the petitioner. In pursuance of the order passed by the High Court, retrial dues of the petitioner was calculated and impugned order dated 04.06.2004 has been passed by the respondent. Being aggrieved, the petitioner has approached this Court by filing the present writ petition.

2. A counter-affidavit has been filed on behalf of the respondent-Jharkhand State Electricity Board in which a plea has been raised that in the year 1964, the petitioner has drawn payment on two occasions that is, on 01.04.1964 and 24.04.1964. It has further been stated that the petitioner availed wrong pay fixation benefit with effect from 17.06.2000 to 30.04.2003 at the time of his promotion on the post of office superintendent. The entire pensionary benefit was calculated by the authorities which has been verified by several persons and since excess amount has been paid to the petitioner, it was deducted from the gratuity amount of the petitioner.

3. Heard learned counsel appearing for the parties and perused the documents on record.

4. The learned counsel appearing for the petitioner has submitted that the petitioner superannuated from service with effect from 30.04.2003 and any excess amount, if paid to the petitioner in the year 1964 or even thereafter, cannot be recovered by the respondent-Jharkhand State Electricity Board at this stage. The learned counsel has further submitted that there cannot be any reasonable ground for effecting such recovery from the gratuity amount of the petitioner if the respondent-Board is not able to establish any act of fraud or misrepresentation played by the petitioner. Admittedly, no proceeding under the provisions of Jharkhand Pension Rules was initiated against the petitioner and therefore, the allegation levelled by the respondent-Jharkhand State Electricity Board that the file was routed by the petitioner himself can not be taken into account. He has further submitted that after more than 40 years any recovery, if effected from the retrial benefits of the petitioner, would cause undue hardship to the petitioner.

5. Per contra, Mr. Rajan Raj appearing for the respondent-Jharkhand State Electricity Board has contended that the petitioner has drawn excess increment in the year 1964 itself and again he was paid excess increment from 17.06.2000 to 30.04.2003 and once such excess payment was detected during the audit, it was legally recoverable from the petitioner as it would have amounted to unjust enrichment of the petitioner. Learned counsel appearing for the respondent has relied on decision of the Hon''ble Supreme Court in Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, wherein the Hon''ble Supreme Court has clearly laid down that even though no fraud or misrepresentation has been alleged on the part of the employee, any excess amount paid can be legally recovered from the said employee. The learned counsel appearing for the petitioner has also relied on the judgment rendered by this Court in "W.P.(S) No. 6050 of 2007 Jayant Kumar Nayak Vs. Jharkhand State Electricity Board, Ranchi & Ors." and he has further submitted that the judgment of the Hon''ble Supreme Court relied upon by the respondent-Board also prohibits recovery from the petitioner.

6. It is not in dispute that the petitioner was appointed on 25.01.1962 and before his superannuation from service he was granted promotion/higher pay-scale in

different grades atleast on 5 occasions however, the excess payment made to the petitioner, as alleged by the Board, was not detected and in fact after the order of High Court when the retrial benefits of the petitioner were calculated, excess payment to the petitioner was detected. I am of a definite opinion that the judgment of the Hon"ble Supreme Court in "Chandi Prasad Uniyal & Ors." (Supra) cannot be relied upon by the respondent-Board to recover after 40 years, an excess increment paid to the petitioner. The petitioner has filed a detailed calculation chart which has not been disputed by the respondent-Board and the reasons given by the petitioner disputing the calculation of the Board, has not been controverted by the Respondent-Board and therefore, I am of the opinion that the impugned order dated 04.06.2004 is liable to be quashed. At this belated stage if the recovery of such huge amount is effected from the gratuity amount of the petitioner it would definitely cause undue hardship to the petitioner. In view of the aforesaid, the writ petition is allowed.