
(2009) 03 JH CK 0012

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2531 of 2003

Sri Subhas Chandra Sarkar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Citation : (2009) 57 BLJR 1978

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Advocate : M.M. Pal, for the Appellant; Lalit Kumar Lal, for the Respondent

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for the following reliefs:

(A) The respondents be directed to fix the final pension of the petitioner immediately and to issue his authority slip and Pension Order on the basis of the last pay drawn by him.

(B) The respondents be directed to pay his Group Insurance amount of Rs. 5,577/- along with the interest which has been illegally recovered from his retirement dues.

(C) The respondents be directed to pay the arrears of pay due to difference of D.A. from Jan"1972 to Sept"1993 with statutory interest.

(D) The respondents be directed to pay his all legal dues including the Security amount which is still lying with head Post Master, Singhbhum, Chaibasa.

(E) The respondents be directed to pay the rest 10% provisional pension which is due for the period from Sept"1995 to Aug"1997 but has been withheld awaiting fixation of pension from Accountant General

2. The main contention raised by the counsel for the petitioner is that the petitioner is legally entitled for all the legal dues with statutory interest and

further entitled for refund of Rs. 5,577/- which has wrongly been deducted from his retiral dues on false pretext of personal dues.

3. The respondent Nos. 2 to 4 initially in their counter affidavit have stated that payment of 100% up-to-date pension has been paid and also the amount of Group Insurance has been paid and arrear of due from 1.4.97 to 1.4.2001 has also been paid which is evident from Annexure A, B and C. So far the amount of Rs. 5,577/- is concerned it is stated that the same was duly paid on 4.6.2003 and the receipt are also annexed. It has also been stated that this fact has been concealed.

4. In compliance with the order passed by this Court Original Register has been produced today even though in the affidavit filed by the Deputy Commissioner, Chaibasa namely Shri Sunil Kumar it is strangely submitted that he is not in a position to produce the record/document of writ petitioner as directed by this Hon"ble Court. It is unfortunate to say the least more so when the original Register has been produced on record today.

5. Pursuant to the liberty granted petitioner had earlier filed an amendment petition I.A. No. 1299/03 wherein at paragraph No. 2 and 3 a prayer was made for issuance of a direction against the respondents to pay him Group Insurance amount of Rs. 5,577/- alone with interest which was illegally recovered from his retirement dues and further to pay the arrears of pay due to difference of D.A. from January, 1972 to Sept., 1993. It has further been prayed to quash the order dated 20th May, 2003 issued by Block Development officer by which it has been informed that the amount of Rs. 5,577/- in respect of Group Insurance of the petitioner is directed to be paid and simultaneously it has been ordered that the said amount is to be recovered from his monthly pension of Rs. 1000/- per month. Para No. 2 and 3 are self contradictory since in para No. 2 it says that the amount of Rs. 5,577/- has been illegally recovered whereas, in para 3 it says vide order dated 20.05.2003 it has been ordered to be recovered.

6. In the counter-affidavit filed on behalf of respondent Nos. 2 to 4 at paragraphs - 6 & 9 it has been submitted as under:

6. That in view of the submissions made here in below almost all claims of the petitioner have been fulfilled by the answering Respondents. From perusal of Annexure-A it would be evident that payment of 100% upto date pension has been paid. From perusal of Annexure-B it would be evident that group insurance amount has been paid and from perusal of Annexure-C it would be evident that arrear of due from 1.4.97 to 1.4.2001 have been paid to petitioner. The aforesaid amounts have been duly received by the petitioner. These facts have been suppressed from this Hon"ble Court by the petitioner.

9. That with respect to the statements made in Para-8 to 12 of the writ application it is respectfully submitted that a sum of Rs. 5577/- was duly paid on 4.6.2003 the receipts of which is annexed as Annexure-B to this Counter Affidavit as such the relief claiming payment of Rs. 5577/- is redundant and this

fact has been deliberately suppressed by this petitioner from this Hon''ble Court.

7. In rejoinder at para 4 the petitioner admits it which is quotes as under:

That in respect of paragraph 6 of the counter affidavit dated 07.11.2003 it is stated and submitted that the petitioner had not suppressed any thing as claimed for. All the payment so far arrears due from 01.04.1997 to 01.04.2001 have been paid to the petitioner on 13.10.2003 i.e. after filing the writ petition and the gratuity amount of Rs. 5577/- had been paid to him on 04.06.2003 i.e. also after filing this writ petition.

8. I have perused the register and also the pleadings and it appears that the petitioner during service period took an advance amount of Rs. 5577/- through Bill No. 137/95-96 which was for agriculture affairs and due to advertence the amount was originally deducted from the amount of group insurance dues but subsequently the said amount of Rs. 5577/- was paid to the petitioner on 04.06.2003 but as the said amount was legally recoverable from the petitioner a letter bearing No. 239 dated 03.05.2003 was issued by the Establishment, Deputy Collector, Saraikela followed by the impugned order of recovery dated 20.05.2003.

9. In any event the petitioner retired in 1995 and the order dated 20.05.2003 has been issued after a lapse of 8 years of retirement for recovery of an amount of Rs. 5577/- from his month to month pension in installment which is on the face of it arbitrary, illegal and cannot be sustained at such a belated stage, more so, after 8 years of retirement. Even the claim of advance has been disputed by the petitioner and thus it would have been all the more necessary to sort it out during his tenure of service or at best at the time of retirement and not at such a belated stage.

10. Considering the aforesaid facts and circumstance of the case, it will be in the interest of justice to quash the letter dated 20.05.2003 which has been challenged by way of amendment petition being illegal, arbitrary and unsustainable in the eyes of law. If the amount has already been deducted, the same will be refunded to the petitioner.

Considering the facts and circumstances of the case this writ petition is partly allowed.