
(2009) 05 JH CK 0130
In the Jharkhand High Court
Case No : L.P.A No. 435 of 2008

State of Jharkhand and Another

APPELLANT

Vs

Ram Kripal Mandal

RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Bihar/Jharkhand Pension Rules, 1950 — Rule 43

Citation : (2009) 05 JH CK 0130

Hon'ble Judges : Gyan Sudha Misra, C.J;D.K. Sinha, J

Bench : Division Bench

Advocate : M.S. Akhtar, GP I, for the Appellant; R.K. Prasad and P. Jojo, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been filed against the order dated 5.8.2008 passed in W.P (S) No. 6572/2007, by which the learned Single Judge had been pleased to allow the writ petition holding therein that the respondent/appellant State should pay the promotional benefit of the second upgraded scale of A.C.P to the petitioner immediately after receipt of confirmation from the Finance Department along with all arrears which accrued from the date when the promotion was granted to him till the date of payment together with interest @ 6% per annum since delay in payment has not been occasioned on account of any lapse on the part of the petitioner.

2. After hearing the counsel for the appellant-State, we find no substance in this appeal as a sum of Rs. 69,335/- had been deducted from the retiral benefits/ dues of the petitioner/respondent and he had also been denied promotional pay in the scale of pay of Rs. 5500-9000/-, which was contrary to the Full Bench decision of this Court delivered in the case of State of Jharkhand v. Padmalochan Kalindi reported in (2007) 4 JLJR 451, wherein it was held that no amount could be recovered from the pension and retiral benefits of the retired employee because no order was passed under Rule 43(b) of the Bihar/Jharkhand Pension

Rules, 1950, nor the competent authority had initiated any proceeding under Rule 43(b) of the said Rules. It had also been held therein that the recovery of excess payment, which was sought to be made, was without even serving notice to the retired employee, nor any opportunity of hearing was granted to explain as to why the amount should not be recovered, which was considered to be in utter violation of the principles of natural justice and it was further held therein that the respondent-State was not competent to proceed for recovery of any amount on the plea of excess payment.

3. Learned Single Judge, relying on the principle laid down in the Full Bench decision in the case of Padmalochan Kanndi (*supra*), held that recovery of a sum of Rs. 69,335/- from the retiral dues of the petitioner/respondent by the appellants was illegal. The respondent-appellants, therefore, were directed to refund the total amount of Rs. 69,335/- to the petitioner-respondent, which had been illegally deducted from his retiral dues.

4. So far, nothing has been brought to our notice by the counsel for the parties that the view taken by the Full Bench decision (*supra*) has been reversed by any Court.

5. At this juncture, counsel for the respondent has drawn our attention to the ratio decided by the Supreme Court in the case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, wherein it has been held that recovery of any amount from the retiral benefits of the retired employee is not permissible.

Thus the view taken by the Full Bench of this Court stands impliedly confirmed.

6. Under the circumstance, we see no reason to entertain this appeal preferred by the State of Jharkhand. Hence, this appeal, being devoid of any substance, is dismissed.