

(2020) 10 JH CK 0081

In the Jharkhand High Court

Case No : Writ Petition(S) No. 1322 of 2019

State of Jharkhand And Ors

APPELLANT

Vs

Ram Pratap Singh And Ors

RESPONDENT

Date of Decision : 20-10-2020

Acts Referred:

Payment of Gratuity Act, 1972 — Section 13
Jharkhand Pension Rules, 2000 — Rule 43(b)
Indian Forest Service (Recruitment) Rules, 1966 — Rule 4(2)(a)
All India Services (Death-cum-Retirement Benefits) Rules, 1958 — Rule 1(2)(b), 6, 6(2)
All India Service (Discipline and Appeal) Rules, 1969 — Rule 10
Constitution of India, 1950 — Article 14

Citation : (2020) 10 JH CK 0081

Hon'ble Judges : Aparesh Kumar Singh, J; Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : Sachin Kumar, Deepak Kumar Dubey, Ravi Kumar Singh

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner State Mr Sachin Kumar, A.A.G-II, assisted by Mr. Deepak Kumar Dubey, Mr. Ravi Kumar Singh for the private respondent and Mr. Suresh Kumar for the Respondent-Accountant General.
2. State of Jharkhand respondent in OA/051/00107/2017, being aggrieved by the order dated 30th November, 2018 passed by learned Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi, whereunder it has directed the petitioner herein to release the gratuity amount in favour of the applicant/private respondent herein within a period of 60 days, has preferred this writ petition.
3. Applicant approached the learned C.A.T with a grievance relating to non-payment of post-retirement benefits. Applicant was appointed through direct recruitment in the Indian Forest Service Cadre in the year 1981 and joined on the post of Assistant Conservator of Forest on 19th May, 1981. After bifurcation of parent State of Bihar he was allocated to Jharkhand cadre. He was made an

accused in Vigilance Case No. 35/2003. During pendency of this vigilance case, he has superannuated on 31st October, 2016, working as Special Secretary, Tourism, Art, Culture, Sports and Youth Affairs. His retirement benefits were not being released. As such, after representation to the Respondent-State of Jharkhand and Principal Secretary, Department of Forest, Environment and Climate Change, Government of Jharkhand, he approached the learned C.A.T. Applicant relied upon the case of Dr. Dudhnath Pandey Vs. State of Jharkhand reported in (2007) 4 JCR 1 (Jhr.) (FB) stating that pension and gratuity could not be withheld during pendency of any disciplinary or criminal proceeding after the retirement under Rule 43(b) of Jharkhand Pension Rules. The respondent-department stated before the learned Tribunal that leave encashment amount of 300 days totalling Rs. 20,97,120/- has been paid vide notification no. 3466 dated 18th August, 2017; provisional pension of 90% of the total pension has been sanctioned vide Letter no. 3467 dated 21st August, 2017; Pension Payment Order has been issued on 30th August, 2017. However, since the applicant is a member of All India Services, the gratuity amount has been withheld in terms of the provisions of All India Services (Death-cum-Retirement Benefits) Rules, 1958, (in short 'AIS (DCRB) Rules, 1958'..

4. Learned Tribunal held that the bone of contention is regarding release of gratuity amount. Relying upon the provisions of Payment of Gratuity Act, it came to an opinion that gratuity could not be withheld, Section 13 thereof has been relied upon. Thus, the Respondent-State was directed to release the gratuity amount to the applicant within stipulated period.

5. Learned counsel for the petitioner-State, Mr. Sachin Kumar, A.A.G-II submits that the applicant is a member of All India Services, appointed in accordance with the provisions of Rule 4(2)(a) of the Indian Forest Service (Recruitment) Rules, 1966 through direct recruitment. The All India Services (Death-cum-Retirement Benefits) Rules, 1958 would apply to his case. Reliance of the applicant on Rule 1(2)(b) of the Rules of 1958 in support of the submission that he is not governed by the All India Services (Death-cum-Retirement Benefits) Rules, 1958, is misconceived. It is further submitted that under Rule 6(2) of AIS (DCRB) 1958 Rules, gratuity can be withheld until the conclusion of any departmental or judicial proceeding. The Payment of Gratuity Act, 1972 does not apply to the case of the applicant. As per Section 2(e) of the Act of 1972, persons who hold a post under the Central or State Government, do not come within the definition of "employee" under The Payment of Gratuity Act, 1972. Learned counsel for the petitioner-State submits that the decision in the case of Dr. Dudhnath Pandey (supra) is in relation to the prevailing Rule 43(b) of Jharkhand Pension Rules as in force at the relevant point of time. The case of Jitendra Kumar Srivastava -Vs. State of Jharkhand reported in (2013) 12 SCC 210 also relates to the scope and ambit of Rule 43(b) of Jharkhand Pension Rules. He submits that the decision of Apex Court in the case of Dr. Hira Lal Vs. State of Bihar & others reported in (2020) 4 SCC 346, also relates to the Bihar Pension Rules. As such, those decisions do not apply to the case of the applicant.

Learned counsel for the State has also sought to distinguish the case of the petitioner from that of Indian Forest Service Officer, Sri Arvind Kumar, an accused in Vigilance Case No. 29/1994. His prayer for discharge was allowed vide order dated 4th September, 2015 passed by this Court in Cr.M.P. No. 2455 of 2014. However, he submits, though the gratuity amount was paid to him in the year 2011, but in the wake of Rule 6(2) of All India Services (Death-cum-Retirement Benefits) Rules 1958, it cannot be treated as an example or precedent, as the concept of negative equality does not flow from Article 14. In the face of Rule 6(2) of 1958 Rules, applicant does not have a legal right to claim gratuity during pendency of the criminal case. Learned counsel for the State has placed reliance on the case of State of Orissa- Vs. Anup Kumar Senapati reported in 2019 SCC on-line SC page-1207, para-39 and submits that the decision of learned Tribunal is, therefore, bad in law and fit to be set aside.

6. Learned counsel for the applicant/respondent herein submits that the applicant has been made to face a vigilance case for 17 years till now, but none of the prosecution witness has yet been examined. He submits that in similar circumstances, Sri Arvind Kumar, who was direct recruit, was granted gratuity during pendency of the vigilance case. Learned counsel for the applicant however has fairly stated that the provisions of Payment of Gratuity Act would not apply to the case of the applicant since he is in All India Services. However, on grounds of equal treatment under law, the State of Jharkhand should not have denied gratuity to the applicant, if criminal case remains pending even after 17 years of institution of F.I.R. Learned counsel for the applicant has placed reliance on the case of F.R. Jesuratnam Vs. Union of India & others reported in 1990 (Supp) S.CC 640. The Apex Court has categorically held that gratuity is not a bounty, but is legal entitlement of an employee, who has served for a number of years under the employer.

7. It appears from reading of the judgment of the Apex Court in the case of F.R.Jesuratnam (Supra) that there was no legal provisions to forfeit the gratuity of the employee in the said case. The case of the applicant at hand is totally different as the gratuity amount can be withheld in view of the Rule 6(2) of All India Services (Death-cum-Retirement Benefits) Rules 1958.

8. We have considered the submission of learned counsel for the parties and taken note of the relevant material facts on record, including the provision of All India Services (Death-cum-Retirement Benefits) Rules 1958 and the decisions cited at the bar.

9. From the undisputed facts borne on record, it is apparent that the applicant, a direct recruit to the Indian Forest Service in the year 1981, is governed by All India Services (Death-cum-Retirement Benefits) Rules 1958. Rule 6 (2) thereof is applicable to the case of the applicant on the claim of the gratuity. Rule 6 of 1958 Rules is quoted hereunder:

"Recovery from pension.-

6 (1) The Central Government reserves to itself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that no such order shall be passed without consulting the Union Public Service Commission: Provided further that-

(a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service.

(b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment;

(i) shall not be instituted save with the sanction of the Central Government ;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;

(c) such judicial proceeding, if not instituted while the pensioner was in service whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

Explanation: - For the purpose of this rule

(a) a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and

(b) a judicial proceeding shall be deemed to be instituted-

(i) In the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court.

Note-1- Where a part of the pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of rupees three thousand five

hundred per mensem or at the rates provided under the corresponding rules of the Central Civil Service (Pension) Rules, 1972".

Note-2- Where Central Government decides not to withhold or withdraw pension but orders recovery of any pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the member of the service.

6(2) Where any departmental or judicial proceeding is instituted under sub-rule (1), or where a departmental proceeding is continued under clause, (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be sanctioned by the Government which instituted such proceeding, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon.

Provided that where disciplinary proceeding has been instituted against a member of the Service before his retirement from service under rule 10 of the All India Service (Discipline and Appeal) Rules, 1969, for imposing any of the penalties specified in clause (i), (ii) and (iv) of sub-rule 1 of rule 6 of the said rules and continuing such proceeding under sub-rule (1) of this rule after his retirement from service, the payment of gratuity or death- cum-retirement gratuity shall not be withheld. 6(3) Payment of provisional pension made under sub-rule (2) shall be adjusted against the final retirement benefits sanctioned to the pensioner upon conclusion of the aforesaid proceeding, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

10. Reading of the aforesaid provisions makes it clear that gratuity can be withheld during pendency of any disciplinary proceeding or judicial proceeding against a member of All India Service. Learned Tribunal committed grave error in placing reliance upon the provisions of Payment of Gratuity Act to grant relief to the applicant in the face of the definition Clause under Section 2(e) of employee. Under the Payment of Gratuity Act, no person employed under the Central Government or State Government shall come within the definition of employee therein. The applicant appears to have been guided by the ratio rendered in the case of Dr. Dudhnath Pandey (Supra) and Jitendra Kumar Srivastava (supra) which decisions are in the context of applicability of Rule 43(b) of Jharkhand Pension Rules. As such, those decisions do not apply to the case of the applicant, since he was a member of All Indian Service. Petitioner-State has released the admissible leave encashment amount and the 90% of pension as per the Rules of

1958. However, since the applicant is facing criminal case in Vigilance P.S. Case No. 35/2003, the employer-State is well within its right to withhold the gratuity amount till the conclusion of judicial proceeding. The decisions cited by the learned counsel for the applicant in the case of F.R. Jesuratnam (Supra) does not come to the aid of the applicant. It is beyond cavil that gratuity is not a bounty and accrues by virtue of long years of service rendered by the employee. But in view of the clear statutory provisions under All India Services (Death-cum-Retirement Benefits) Rules 1958, the decision of F.R.Jesuratnam is not applicable to the case of the applicant, an Indian Forest Service Officer.

11. In view of the discussions made hereinabove and in the facts and circumstances of the case, this Court is of the clear opinion that learned Tribunal committed serious error in directing release of gratuity amount to the applicant when judicial proceedings under Vigilance P.S. 35/2003 are still underway and not yet concluded. As such, the impugned order dated 30th November, 2018 passed by learned Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi cannot be sustained in the eye of law and on facts. It is set aside. Accordingly, the writ petition is allowed.