
(2009) 04 JH CK 0128
In the Jharkhand High Court

Teklal Mahto

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 04 JH CK 0128

Hon'ble Judges : D.N. Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been instituted mainly against the order passed by the respondent No. 6, dated 24th of October, 2008 (Annexure-1 to the memo of the petition) whereby sizable amount of Rs. 1,00,471.00 paise has been ordered to be deducted from the retirement benefits specially from gratuity and in pursuance of this order at Annexure-1. It is submitted by learned Counsel for the petitioner that the said amount has been deducted from the gratuity of the present petitioner, without giving any notice and without giving any opportunity of being heard to the petitioner. No basis or calculation nor any notice of being heard has been given to the petitioner. Simply a Clerk or Head Clerk of the concerned respondents office has calculated the aforesaid figure and no details has been how this figure has been arrived at. On the contrary whatever salary was paid to the petitioner was absolutely in accordance with law, rules, regulations and policy etc. issued by the State of Jharkhand. It is also submitted by the learned Counsel for petitioner that had an opportunity would have been given to the petitioner, these facts would have brought to the notice of the concerned respondents and without hearing an unilaterally, arbitrarily and capricious decision has been taken by the respondents, hence the same deserves to be quashed and set aside when there is breach of principles of natural justice.

2. Learned Counsel appearing for the petitioner has relied upon the decision of this Court in the case of Laxman Prasad Gupta v. The State of Jharkhand and

Ors. reported in 2007 (4) JLJR 459 and also the decision rendered by the Supreme Court in the case of Sahib Ram Vs. State of Haryana and Others, . Thus, unilateral decision has led this petition, otherwise, there would have been no necessity of filing of the petition at all, if this bare minimum requirement of principles of natural justice would have been observed.

3. I have heard learned Counsel appearing for the respondents who has submitted that the amount deducted is in accordance with law as there was an excess payment of the amount to the petitioner when he was in service. No illegality has been committed by the respondent in taking the amount even by now this amount has been deducted and therefore, petition may not be allowed by this Court.

4. Having heard learned Counsel appearing on behalf of both the sides and looking to the facts and circumstances, I hereby quash and set aside the order passed by the respondent No. 6 at Annexure-1 dated 24th of October, 2008 mainly for the facts and reasons that:

(i) this order has been passed without giving any basis of the figure arrived at in the order at Annexure- 1. A figure of Rs. 1,00,471/- cannot come in the mind of respondent from heaven or sky. There ought to be some basis, or calculation, which must be supplied by respondent.

(ii) no notice was given to the petitioner before finalization of the amount as shown at Annexure-1.

(iii) no opportunity of being heard was ever given to the petitioner and

(iv) in view of the ratio of decisions of the Hon'ble Apex Court as well as this Court, as stated hereinabove, at least an opportunity of being heard ought to have been given before arriving at decision of deduction of amount from retirement benefits by the concerned respondents.

5. The decision at Annexure-1 is unilateral and arbitrary. Arbitrariness and equality are sworn enemies of each other. If arbitrariness is present equality is always absent and where equality is present arbitrariness is always absent. Arbitrary decision will lead to a breach of equality i.e. Article 14 of the Constitution of India and therefore, an impugned order deserves to be quashed and set aside.

6. As a cumulative effect of the aforesaid facts and reasons and looking to the judicial pronouncements, I hereby quash and set aside the order passed by the respondent No. 6 at Annexure-1 dated 24th of October, 2008, reserving liberty to the respondents, to follow the procedure established by law at least to follow the bare minimum requirement of principles of natural justice and thereafter, to take action against the present petitioner.

7. As the amount has already deducted, I hereby direct the concerned respondents to refund the said amount or to hear the petitioner and decide

afresh in accordance with law, within a period of six months from the date of receipt of a copy of this order. If no fresh order is passed within six months, the amount deducted will be refunded to the petitioner.

8. In view of the above observation, this writ petition stands disposed of.