
(2013) 12 JH CK 0015
In the Jharkhand High Court
Case No : L.P.A. No. 465 of 2005

The State of Jharkhand and Others	Vs	APPELLANT
Dr. Umesh Chandra Singh and Another		RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 1 JLJR 590

Hon'ble Judges : R. Banumathi, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Ram Nivas Roy, G.P. III, for the Appellant; V.P. Singh and Mr. A.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. This Letters Patent Appeal is preferred against order dated 07.04.2005 passed in a writ petition W.P. (S) No. 3849 of 2003 whereby the learned Single Judge held that the respondent is entitled to get 90% gratuity (Provisional Gratuity), leave encashment and other retiral dues. Two criminal cases were registered against the respondent namely RC47(A)/96(Pat) and RC48(A)/96(Pat) and the respondent was made accused in terms of Government approval order No. 2766/J dated 18.08.2001 and No. 2844/J dated 22.08.2001. The respondent was suspended on 30.01.2002 and he was superannuated on 30.04.2002 and the respondent was paid Group Insurance and Provident Fund and 90% of the pension as retiral benefits. The respondent filed writ petition being W.P. (S) No. 3849 of 2003 challenging the order of the appellant withholding the pension and other retiral benefits. Learned Single Judge held that the appellant State of Jharkhand can withhold only 10% of the pension as well as gratuity and directed the appellant to pay 90% of the gratuity, leave encashment and other retiral dues with admissible interest to the respondent.

2. Being aggrieved by the order passed in W.P. (S) No. 3849 of 2003, the appellant has preferred this Letters Patent Appeal.

3. Appellant State is represented by Mr. Ram Nivas Roy, G.P.-III and respondent is represented by Sr. Counsel Mr. V.P. Singh.

4. Learned counsel for the appellant submitted that the Full Bench of this Court in the case of Dr. Dudh Nath Pandey Vs. The State of Jharkhand, The Secretary, Animal Husbandry and Fishery Department, Government of Jharkhand, The Joint Director (Director) (Poultry), Animal Husbandry Department and The Accountant General, , after detailed discussions on the subject matter held that the Government has no power to withhold the gratuity and pension during the pendency of the departmental proceeding or criminal proceeding and that it does not give any power to withhold leave encashment at any stage either prior to the proceeding or after conclusion of the proceeding. The Full Bench in Dr. Dudh Nath Pandey's case quashed the circular withholding the leave encashment holding that it has no sanctity of law.

5. Challenging the judgment dated 31.10.2007 passed in L.P.A. No. 678 of 2005 by the Division Bench directing the State to pay the full pension as also gratuity and other retiral benefits, the State of Jharkhand had preferred appeal before the Hon''ble Supreme Court which is reported in State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, Upholding the judgment of the Division Bench of this Court passed in L.P.A. No. 678 of 2005, the Hon''ble Supreme Court held that there is no provision in the Rules for withholding of pension/gratuity when such departmental or judicial proceedings are still pending. Under Rule 43(b), the State Government has power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of grave misconduct either in a departmental proceeding or judicial proceeding, however, Rule 43(b) cannot be invoked while the departmental proceeding or judicial proceeding are pending. The Hon''ble Supreme Court held that grant of pension does not depend upon an order being passed by the authorities to that effect and that the right to receive pension is recognized as a right in property and that a person cannot be deprived of this pension without the authority of law which is the constitutional mandate enshrined under Article 300-A of the Constitution of India.

6. We may usefully refer to paragraphs 11, 13, 14 and 15 of the judgment of the Hon''ble Supreme Court:

11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending.

13. In State of West Bengal Vs. Haresh C. Banerjee and Others, this Court recognized that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-Fourth Amendment) Act 1978 w.e.f.

20th June, 1979, the right to property was no longer remained a fundamental right, it was still a Constitutional right, as provided in Article 300A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.

14. Article 300-A of the Constitution of India reads as under:-

300-A. Persons not to be deprived of property save by authority of law.-No person shall be deprived of his property save by authority of law.

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the Appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.

Since the circular issued by the State Government for withholding of the pension and other retiral benefits during the pendency of the criminal proceeding has been quashed by the Division Bench which was also confirmed by the Hon'ble Supreme Court, this Letters Patent Appeal is liable to be dismissed.

7. Learned Senior Counsel submitted that even though the criminal cases are pending from 1996, the respondent has not been convicted and therefore, prayed for a direction for payment of full pension, full gratuity and other retiral benefits which are payable to the respondent.

8. In view of the Full Bench judgment reported in Dr. Dudh Nath Pandey Vs. The State of Jharkhand, The Secretary, Animal Husbandry and Fishery Department, Government of Jharkhand, The Joint Director (Director) (Poultry), Animal Husbandry Department and The Accountant General, the respondent is entitled to the full pension and all other retiral benefits due and payable to him.

9. Learned Senior Counsel for the respondent has prayed that since the pension and other retiral benefits have been withheld in spite of the direction issued by the learned Single Judge, the appellant be directed to pay the same with interest.

10. We are unable to countenance the submissions of the learned Senior Counsel appearing for the respondent for the reason that on 23.02.2006 this Court has granted stay of the order passed by the learned Single Judge in W.P. (S) No. 3849 of 2003. That apart, it is also pertinent to note that the judgment of the Full Bench in Dr. Dudh Nath Pandey's case was pronounced on 28.08.2007 even then the respondent has not taken steps for early hearing of the Letters Patent Appeal nor moved any application for vacating the stay. In such facts and circumstances of the case, we are not inclined to issue any direction to the appellant-State of Jharkhand to pay interest on the retiral benefits and other amounts payable to the respondent, apart from the statutory interest. The Letters Patent Appeal is dismissed. The appellant is directed to settle the full pension and other retiral benefits with admissible interest within a period of two months from the date of receipt of copy of this order.