

(2020) 01 JH CK 0193

In the Jharkhand High Court

Case No : Writ Petition (S) No. 7256 Of 2016

Vidya Bhushan Sharma

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 15-01-2020

Acts Referred:

Jharkhand Service Code, 2001 — Rule 227
Constitution Of India, 1950 — Article 300A

Citation : (2020) 01 JH CK 0193

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Saurabh Shekhar, Yogendra Prasad

Final Decision : Disposed Of

Judgement

The petitioner has approached this Court with a prayer for a direction upon the respondents to pay the amount of General Provident Fund, Group

Insurance and leave encashment with statutory interest.

The case of the petitioner lies in a narrow compass. The petitioner was appointed in the year, 1974 and gave his joining to the post of Constable

Warden on 12.02.1976 at Central Jail, Ranchi on temporary basis. On 01.01.1982, the petitioner was transferred from Central Jail, Ranchi to Mandal

Jail, Sakchi, Jamshedpur. Thereafter, he was posted at Ghaghidih Jail, Jamshedpur in the year, 1984 and again to Mandal Jail, Sakchi, Jamshedpur in

the year, 1985. In the year, 1986, the petitioner was again transferred to Central Jail at Ranchi and services of the petitioner was confirmed on

12.02.1986 by the orders of then, Jail Superintendent. During the service period, he was transferred and posted to several other Jails located within the

jurisdiction of State of Jharkhand. It is specific case of the petitioner that in the

year, 2006, when he was posted at Lohardaga Madndal Jail, he was put under suspension on 21.05.2006 and Memorandum of Charge was served upon him on 23.05.2006. The departmental proceeding was initiated on the charges and after conclusion of the same, the petitioner was found guilty of charges as charges were proved and as such, punishment order of dismissal was passed vide order dated 26.10.2015, though he was due to retire in the month of November, 2015. It is further case of the petitioner that a criminal case was also lodged against the petitioner and in the said criminal case, the petitioner has been convicted and sentenced to undergo R.I. for 5 years along with fine of Rs.10,000/- and S.I. for 2 months in default of payment of fine amount. Against the order of conviction, the petitioner has preferred Criminal Appeal, which is still pending before this Court and petitioner has been granted the privilege of bail vide order dated 05.10.2015 by this Honâ??ble Court and as such, he has been constrained to knock the door of this Court for payment of amount under the head of GPF, group insurance and leave encashment with statutory interest as the same have not been paid to him. However, during the pendency of the instant writ petition, amount of Group Insurance and GPF have been paid to the petitioner, but the amount of leave encashment is denied.

Mr. Saurabh Shekhar, learned counsel for the petitioner submits that petitioner is entitled for amount of leave encashment also, the respondents without any authority of law has withheld the said amount, which is impermissible in the eyes of law. Learned counsel places heavy reliance on the judgment of this Court in case of Dr. Shailendra Kumar Sinha Vs. The State of Jharkhand & Ors and other analogous cases [In W.P.(S) No.4209/2018 and other analogous cases] and submits that even in the event of pendency of criminal case and conviction as well in case of dismissal from service, the amount of leave encashment cannot be withheld as it is the part and parcel of the salary as per Article 300-A of the Constitution of India. Learned counsel further submits that as the amount of leave encashment has illegally been withheld and as such, petitioner is also entitled for interest and a direction be given upon the respondents to calculate the same amount and to make payment to the petitioner, within stipulated time with interest.

Per contra, counter-affidavit has been filed. Mr. Yogendra Prasad, learned counsel

for the respondents vehemently opposes the contention of the learned counsel for the petitioner and submits that the amount of GPF and Group Insurance has already been paid to the petitioner, save and except, amount of leave encashment. Learned counsel draws the attention of the Court towards Rule 227 of the Jharkhand Service Code, the petitioner is not entitled for encashment of unutilized earned leave as he has not completed service and dismissed from the service. The amount of leave encashment is payable for entire length of service and as the petitioner has been convicted and he has not completed the entire length of service, he is not entitled for the same and as such, there is no illegality in withholding the amount of leave encashment.

Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the case of the petitioner needs consideration. The action of the respondents in withholding the amount of leave encashment is not in-consonance with Rule 227 of the Jharkhand

Service Code. Rule 227 of the Jharkhand Service Code reads as follows:-

“In calculating the earned leave, the actual number of days of duty performed should be counted and then divided by 11 or 16, as the case may be. Fractions of a day should not appear in the calculation, fractions below half being ignored and those of half and more reckoned as one day.”

From perusal of the aforesaid Rule, it appears that earned leave whatever the petitioner has earned, by way of working, he is fully entitled for

encashment of the unutilized earned leave. The petitioner is not claiming the earned leave for the entire length of service which he ought to have

rendered. He is only claiming the benefit of leave encashment for which he has worked and as such, his entitlement for the same, cannot be

questioned. Further, issue fell for consideration before this Court in case of Dr. Shailendra Kumar Sinha (supra) and this Court after taking into

consideration the various judgment of Hon’ble Apex Court, clearly observed therein that leave encashment is protected under Article 300-A of the

Constitution of India, which cannot be taken away by any executive instructions and as such, orders of withholding leave encashment of the petitioners

were quashed and set aside and respondents were directed to pay the amount of leave encashment to the petitioners as per their entitlement. In the

instant case, though no specific orders have been passed, but the respondents have admittedly not released the amount of leave encashment, which is illegal and not permissible in the eyes of law.

As cumulative effect of the aforesaid rules, guidelines and judicial pronouncement, the petitioner is entitled for amount of leave encashment and as such, the respondents are directed to pay the amount of the leave encashment to the petitioner for the period during which he has worked, within a period of ten weeksâ?? from the date of receipt of a copy of this order. Resultantly, writ petition stands disposed of.