

(2019) 09 JH CK 0096
Jharkhand High Court
Case No: Writ Petition (S) No. 4320 of 2014

Banshi Dhar Kundu

APPELLANT

Vs

State of Jharkhand
And Ors

RESPONDENT

Date of Decision: Sept. 6, 2019

Acts Referred:

- Jharkhand Pension Rules, 2000 - Rule 43(a), 43(b)

Hon'ble Judges: Shree Chandrashekhar, J

Bench: Single Bench

Advocate: Amrendra Pradhan, Suresh Kumar, Sunil Singh

Final Decision: Allowed

Judgement

1. The petitioner has questioned the legality of the order dated 13.11.2014 passed by the District Superintendent of Education, Seraikella-Kharsawan,

by which a direction has been issued to deduct Rs.2,47,475/- from the Gratuity payable to the petitioner.

2. The petitioner was appointed on 23.12.1976 as Science Teacher in the Middle School, Adityapur. He was sent for 'In-service Training' and he

acquired the training qualification on 03.03.1984. The petitioner has superannuated from service w.e.f 31.05.2014.

3. Pension and Gratuity are the statutory rights of an employee. Long back, in 'Deokinandan Prasad Vs. State of Bihar and others' reported in

(1971) 2 SCC 330, it has been held that pension is not a bounty rather it is a right earned by an employee on account of his meritorious service. The

law on pension has been reaffirmed by the Supreme Court in 'D.S Nakara and others Vs. Union of India' reported in (1983) 1 SCC 30.5 By

now, it is well-accepted that without following the procedure in law the amount of Pension/Gratuity cannot be withheld/forfeited. The Payment of

Gratuity Act, 1972 provides that the amount of Gratuity cannot be forfeited even in execution of an order of a civil or criminal court.

4. Under the Jharkhand Pension Rules, 2000, after superannuation of an employee a proceeding can be initiated under Rule 43 (a) or Rule 43(b).

Under the Recovery Act or by filing civil suit the amount paid to an employee in excess of what was legally payable to him can be recovered.

However, in the present case an altogether strange proceeding has been initiated by the District Superintendent of Education, Seraikella-Kharsawan.

The facts disclosed in the present proceeding would disclose that a show-cause notice was issued to the petitioner; may be before he superannuated

from service. But, a mere show-cause notice is not sufficient to deduct Rs.2,47,475/-from the Gratuity payable to the petitioner. The petitioner has

brought on record the order passed in C.W.J.C No.837 of 1990 (R) and the office order dated 08.04.1991 to plead that B.Sc. Trained Scale was

granted to him by virtue of the order of the writ Court. In paragraph no.3 of the order dated 13.11.2014, there is a reference of the order dated

08.04.1991 passed in C.W.J.C No.837 of 1990 (R) and it is also recorded that by letter dated 26.04.1992 of the District Superintendent of Education,

Seraikella-Kharsawan, the petitioner was granted B.Sc. Trained Scale w.e.f 03.03.1984. The petitioner has also relied on the order passed in W.P (S)

No.1631 of 2016 and batch cases.

5. From the aforesaid facts, it does not appear that the petitioner has made a misrepresentation or played fraud in obtaining B.Sc. Trained Scale w.e.f

03.03.1984. In any event, an order which was passed in the year 1991; B.Sc. Trained Scale granted to the petitioner, cannot be reopened more than

22 years thereafter, and more particularly, after retirement of the petitioner from the service.

6. In view of the above discussions, on due consideration of the materials on record, I find serious illegality in the impugned order dated 13.11.2014

and, accordingly, it is quashed.

7. The writ petition stands allowed.

8. The amount of Rs.2,47,475/- deducted from the Gratuity of the petitioner shall be refunded to him.