
(2020) 08 JH CK 0131

Jharkhand High Court

Case No: Writ Petition (S) No. 1565 of 2017, I.A. No. 2761 of 2018

Kanhaiya Prasad

APPELLANT

Vs

Jharkhand State Food
& Civil Supplies
Corporation Ltd. And
Ors

RESPONDENT

Date of Decision: Aug. 20, 2020

Acts Referred:

- Constitution of India, 1950 - Article 300A

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Pandey Neeraj Rai, Rohit Ranjan Sinha, Akchansh Kishore, Rohan Ranjan, Dr. Ashok Kumar Singh, Jitendra Shankar Singh, Sumit Prakash

Final Decision: Allowed

Judgement

1. Heard Mr. Pandey Neeraj Rai, learned counsel for the petitioner, Dr. Ashok Kumar Singh, learned counsel for respondent nos. 1 to 4, Mr. Jitendra

Shankar Singh, learned counsel for respondent nos. 5 to 7 and Mr. Sumit Prakash, learned counsel for respondent nos. 8 and 9.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising

due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard on merit.

3. The petitioner has preferred this writ petition for direction upon the respondents to pay the post retiral dues of the petitioner under the heads as

specified in paragraph 8 of this writ petition with interest @ 18% per annum.

4. Mr. Pandey Neeraj Rai, learned counsel for the petitioner draws attention of this Court to paragraph 8 of this writ petition, wherein, dues have been

described. He submits that so far as Leave encashment and Gratuity are concerned, that have already been paid to the petitioner. The pension has

already been finalized. The amount of Provident Fund to the extent of Rs.10,15,350/- has already been paid to the petitioner. He further submits that

the petitioner has not yet received the amount of arrears in the form of different of pay for the period from 01.01.1997 to 31.12.2005 pursuant to the 5

th pay revision, arrears in the form of different of pay for the period from 01.04.2007 to 31.07.2011 pursuant to the 6th pay revision, amount of Group

Insurance as deducted regularly from the salary, salary and allowances of 6 months i.e. for the period between September 2010 to December 2010

and April to May 2011 and unpaid amount of departmental transportation and handling charges, pertaining to the year 2006 and payment of Provident

Fund deducted from the salary of the petitioner while posted in the districts Siwan and Nawada. He further submits that the petitioner was earlier

appointed in the Bihar State Food & Civil Supplies Corporation Limited and after bifurcation of the State of Bihar in the year 2000, the petitioner was

transferred to Jharkhand State Food & Civil Supplies Corporation Limited. The petitioner has retired on 31.07.2011. He also submits that in spite of

several representations, part of the aforesaid dues, which have been recorded herein above, has not been released in favour of the petitioner. He

further submits that the petitioner is suffering from cancer and he is in dire need of the amount, but the said amount has not yet been paid to the

petitioner. He further submits that the petitioner is also entitled for interest as the petitioner has been harassed a lot. He relied upon the judgment

rendered by the Hon'ble Supreme Court in the case of State of Kerala v. M. Padmanabhan Nair reported in (1985) 1 SCC 429.

Paragraphs 2 and 4 of the said judgment are quoted herein below:

2. Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the

concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since

the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite

information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of

gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following

month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-

emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence

at the expiry of two months from the date of retirement.

xxx xxx xxx

4. Unfortunately such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate

of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in

his claim being decreed at 6 per cent by not preferring any cross-objections in the High Court it would not be proper for us to enhance the rate to 12

per cent per annum which we were otherwise inclined to grant.

He further relied upon the judgment rendered by the Hon'ble Supreme Court in the case of D.D. Tewari v. Uttar Haryana Bijli Vitran Nigam Ltd.,

reported in (2014) 8 SCC 894.

Paragraphs 4 and 6 of the said judgment are quoted herein below:

4. The learned Single Judge has allowed the writ petition vide order dated 25-8-2010, after setting aside the action of the respondents in withholding

the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as

claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in *State of Kerala v. M. Padmanabhan Nair*,

wherein this Court reiterated its earlier view holding that:

1. [the] pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become,

under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be

visited with the penalty of payment of interest at the current market rate till actual payment [to the employees].

xxx xxx xxx

6. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31-10-2006 and the order of the learned

Single Judge after adverting to the relevant facts and the legal position has given a direction to the respondent employer to pay the erroneously

withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the

appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be

paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle

laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due

and the gratuity amount which are to be paid by the respondent.

He further relied upon the judgment rendered by the Hon'ble Patna High Court in the case of *Mostt. Rukmini Devi v. State of Bihar*, reported in 1996

(2) PLJR 348.

Paragraphs 7, 14 and 17 of the said judgment are quoted herein below:

7. The Supreme Court in the case of State of Kerala and others v. M.Padnabhan Nair, reported in A.I.R. 1985 S.C. 356 ,realising the agony and

harassment of the retired employees at the fag end of their life observed as follows :

Usually the delay occurs by reason of non-production of the L.P.C. (Last Pay Certificate) and the N.L.C. (No Liability Certificate) from the

concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since

the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite

information and issuance of these two documents should not be completed atleast a week before the date of retirement so that the payment of gratuity

amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The

necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it

would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of

two months from the date of retirement.

xxx xxx xxx

14. Having regard to the aforementioned facts and circumstances, as also considering the large number of pendency of cases in regard to retirement

benefit matters in this Court. I am constrained to pass a general order that the concerned Government servants or their legal heirs and representatives

should raise their claims afresh by filing representation. in which they should give full details of their claim and also full address for communication

henceforth before the concerned Heads of Departments, who shall grant a receipt in token thereof. The Heads of the respective departments shall get

the entire claim filed before him examined through various concerned authorities including Director, Provident Fund/District Provident Fund Officers

and finally dispose them of by a reasoned order dealing with each and every claim separately and shall also issue necessary sanction order/authority

slip for payment of admitted dues with statutory interest as well as the interest as per various, Government circulars/decisions taken in that regard

within a period of two months of the receipt of the claim.

xxx xxx xxx

17. It is further made clear that non-compliance of any part of the aforesaid directions by any of the concerned authorities would constitute contempt

of this court and will be seriously viewed. This Court may also consider to award heavy penal interest and costs besides imposition of punishment in

the Contempt proceeding against the concerned Heads of Departments/Accountant-General, Bihar, which shall be realised from their pocket.

5. Dr. Ashok Kumar Singh, learned counsel for respondent nos. 1 to 4 submits that the Jharkhand State Food & Civil Supply Corporation Ltd. came

into existence on 01.02.2011 and became operation w.e.f. 01.02.2011. By way of referring Resolution dated 04.02.2016, annexed with the counter

affidavit filed by respondent nos. 1 to 4, he submits that the Jharkhand State Food & Civil Corporation Ltd. is liable for payment of retiral dues. He

further submits that he accepts this position that the Jharkhand State Food & Civil Supply Corporation Ltd. will pay all the retiral dues to the petitioner,

but the dues which are of the period before bifurcation of the State of Bihar, such amounts are required to be paid to the petitioner by the Bihar State

Food & Civil Supply Corporation Ltd. He further submits that the petitioner may be directed to file a fresh representation and the admitted retiral dues

shall be released in favour of the petitioner within a period of 15 days from the date of receipt/production of such representation.

6. Mr. Jitendra Shankar Singh, learned counsel for respondent nos. 5 to 7 draws attention of this Court to Annexure-5/1 of the writ petition and

submits that after bifurcation of the State of Bihar, the assets and liabilities of the Bihar State Food & Civil Supply Corporation Ltd. are with

Jharkhand State Food & Civil Supply Corporation Ltd. on ""As is where is"" basis. He further submits that on the basis of this document, now there is

liability upon the Jharkhand State Food & Civil Supply Corporation Ltd. to pay all the dues to the petitioner.

7. At this stage, Mr. Pandey Neeraj Rai, learned counsel for the petitioner draws attention of the Court to certain annexures, which have been filed by

the petitioner by way of rejoinder to the counter affidavit, wherein, it has been admitted by the Bihar State Food & Civil Supplies Corporation Ltd. at

Annexure-15 series that certain amounts are due for payment to the petitioner. He further submits that in the letter dated 12.08.2016 issued by the

District Manager of the Jharkhand State Food & Civil Supplies Corporation Ltd., Gumla, it is stated that the amount has not been paid to the petitioner

as sanctioned has not been received as yet.

8. The Court has given thoughtful consideration of the submission of the learned counsel for the parties. It appears from Annexure-5/1 of the writ

petition that the assets and liabilities have already been bifurcated between the two Corporations w.e.f. 14.11.2000 itself, wherein, amount has also

been described that what has to be paid by the Jharkhand State Food & Civil Supplies Corporation Ltd. as well as by the Bihar State Food & Civil

Supplies Corporation Ltd. on ""As is where is"" basis. The amount in question has been admitted by the Bihar State Food & Civil Supplies Corporation

Ltd. and to some extent by the Jharkhand State Food & Civil Supplies Corporation Ltd. at page 63 of the rejoinder of the counter affidavit. It has been

admitted by the learned counsel for respondent nos. 1 to 4 that so far as retiral dues are concerned, the Jharkhand State Food & Civil Supplies

Corporation Ltd. is liable to pay the same. Thus, the only dues, which are required to be released in favour of the petitioner, are the arrears of 5th pay

revision for the period from 01.01.1997 to 31.12.2005, which will be paid by the Bihar State Food & Civil Supply Corporation Ltd. for the period prior

to 14.11.2000 i.e. before bifurcation of the State of Bihar and for the remaining period, the Jharkhand State Food & Civil Supplies Corporation Ltd. is

liable to make the payment. So far as the arrears of 6th pay revision for the period from 01.04.2007 to 31.07.2011 is concerned, the payment will be

done by the Jharkhand State Food & Civil Supplies Corporation Ltd. The concluding part of the Resolution dated 04.02.2016 clearly suggests that the

Jharkhand State Food & Civil Supplies Corporation Ltd. is liable to make payment of retiral dues etc. w.e.f. 14.11.2000. In that view of the matter, the

petitioner cannot be allowed to suffer for non-payment of certain dues, which according to the learned counsel for respondent nos. 1 to 4 is the liability

of the Bihar State Food & Civil Supplies Corporation Ltd. In that view of the matter, the Jharkhand State Food & Civil Supplies Corporation Ltd. is

directed to release all the admitted dues, as stated herein above in favour of the petitioner within a period of four weeks from the date of

receipt/production of a copy of this order as the Court has taken note of the fact that the assets and liabilities have already been bifurcated by

Annexure-5/1, wherein, it is admitted that the retiral dues w.e.f. 14.11.2000 are required to be released by the Jharkhand State Food & Civil Supplies

Corporation Ltd. It is open for the Jharkhand State Food & Civil Supplies Corporation Ltd. to reconcile the claim if they think that it is required to be

paid by the Bihar State Food & Civil Supplies Corporation Ltd., but no resistance for justification will be entertained by the Court for non-payment of

dues to the employee in question.

9. In this case, the Court has to consider interest part also as the petitioner has been harassed a lot in fighting of two Corporations. The petitioner has

been compelled to run pillar to post. The retiral benefits of a retired person is the only assets, which is a property in light of Article 300-A of the

Constitution of India. Had this amount been released in time, the petitioner would have been in a position to deposit it in an appropriate scheme on his

account and the petitioner could have been in a position to receive some interest. In that view of the matter, the Court finds that this is a fit case for

granting interest and in light of the aforesaid judgments reported in *State of Kerala v. M. Padmanabhan Nair*, *D.D. Tewari v. Uttar Haryana Bijli*

Vitran Nigam Ltd. and Mostt. Rukmini Devi v. State of Bihar (supra), the petitioner shall be entitled to receive interest on the due amount @ 6% per

annum.

10. In view of the aforesaid terms, this writ petition stands allowed and disposed of.

11. Accordingly, I.A. No. 2761 of 2018 also stands disposed of.