

Dr. Banshidhar Sharma Vs Birsa Agriculture University and Others

Court: Jharkhand High Court

Date of Decision: Dec. 18, 2008

Citation: (2009) 2 JCR 364

Hon'ble Judges: R.R. Prasad, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

R.R. Prasad, J.

When the case was taken up on 1.12.2008, it was adjourned for today, at the instance of the respondent-University for filing counter affidavit. But while granting adjournment, it was made clear that if the counter affidavit is not filed by the next date, the matter shall be

disposed of, on the basis of the materials available on the record. In spite of that no counter affidavit has been filed.

2. Accordingly matter was heard.

3. Learned Counsel appearing for the petitioner submits that the petitioner got retired on 11.3.1993 as "an Associate Professor" from Veterinary

College, Birsa Agriculture University, Ranchi and was being paid Pension, but all on a sudden, after fifteen years of his retirement, the University

has issued a letter vide Memo No. 918 dated 26.2.2008. whereunder it has been communicated that the petitioner has already drawn a sum of Rs.

1,13,155/- as pension in excess, which needs to be deposited by the petitioner, failing which Rs. 3,000/- would be recovered per month from the

amount of the pension of the petitioner and in fact, the Authority has already started deducting Rs. 3,000/- per month from the amount of the

Pension, which is quite illegal, as the respondent does not have authority to deduct the amount of pension in absence of any adverse order in terms

of the provision as contained in Rule 43(b) of the Bihar Pension Rules. 1950, which proposition of law gets reflected from the decision rendered in

the case of The State of Jharkhand and Others Vs. Padmalochan Kalindi and Another, and hence order, as contained in Memo No. 918 dated

26.2.2008 (Annexure-2), is fit to be quashed.

4. At the outset it be stated that the matter relating to Pension of the petitioner being a member of the Staff of the University shall not be governed

by the provisions of the Bihar Pension Rules rather it would be subjected to statute, if any, framed under the Bihar Agricultural University Act

relating to grant of retirement benefit to the employees. But nothing was placed before me permitting the employer to withhold the amount of

pension or to recover that amount which is said to have been drawn in excess. In the instant case, the University has passed an order for adjusting

Rs. 3,000/- per month from the amount of the pension of the petitioner as the petitioner has been alleged to have drawn Rs. 1,13,155/- in excess

as pension but that amount in absence of any provision either in statute or regulation empowering the authority to recover the same, cannot be

recovered after 15 years of retirement, from the amount of pension of the petitioner. That apart nothing appears to be on record that the petitioner

was allowed to draw the amount of Rs. 1,13,155/- allegedly in excess on account of any misrepresentation on the part of the petitioner. In that

view of the matter also the authority of the University in view of the ratio laid down by Hon"ble Supreme Court in case of Sahib Ram Vs. State of

Haryana and Others, , is not entitled to recover the same.

5. In that view of the matter, order, as contained in Memo No. 918 dated 26.2.2008 (Annexure-2), is hereby quashed. Consequently, whatever

amount has been deducted from the petitioner"s pension, that needs to be returned to the petitioner. Accordingly, the respondent No. 2 the

Controller Birsa Agriculture University, Kanke, Ranchi, is directed to return the amount, which has already been deducted from the petitioner"s

pension.

6. With these observations and directions, this writ petition is disposed of.