

(2013) 10 JH CK 0035
Jharkhand High Court
Case No: Writ Petition (S) No. 7486 of 2012

Shyam Sundar Pathak

APPELLANT

Vs

Jharkhand State
Electricity Board and
Others

RESPONDENT

Date of Decision: Oct. 22, 2013

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: B.N. Jha Prabhakar, for the Appellant; Rajiv Ranjan, for the Respondent

Final Decision: Disposed Off

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. In the instant case, the grievance of the petitioner now is confined to the claim for payment of the Leave Encashment amount as also to pay interest on the delayed payment of the Pension-cum-D.C.R. gratuity to the petitioner.

2. The petitioner is said to have superannuated on reaching 60 years of age on 31st December, 2010 as Chief Engineer (Civil) under the Jharkhand State Electricity Board. According to the petitioner after 14 years of his retirement, a departmental proceeding has been initiated against him and that has been made the basis for withholding the Leave Encashment amount.

3. It is submitted that the respondents, in their counter affidavit, has also admitted that 100% pension and gratuity amount has been paid, but the Leave Encashment amount has withheld only on the ground of pendency of the departmental proceeding.

4. Learned counsel for the petitioner submits that the issue is no longer res integra in view of the judgment rendered in the case of [Dr. Dudh Nath Pandey Vs. The State of Jharkhand, The Secretary, Animal Husbandry and Fishery Department,](#)

5. Learned counsel for Respondents-Board submits on the basis of instruction contained in the counter affidavit that the departmental proceeding has been initiated against the petitioner and that is basis for withholding the Leave Encashment amount till the final outcome of the said proceeding. However, he is not able to dispute the law settled by the Full Bench judgment of this Court in the case of Dr. Dudh Nath Pandey (Supra) and also the fact that the said view has now been upheld by Hon'ble Supreme Court in the case of [State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another](#). In such circumstances, simply on account of pendency of a departmental proceeding after the retirement of the petitioner, the respondents do not have any authority to withhold the Leave Encashment amount as is now well settled by judgment rendered by Full Bench in the case of Dudh Nath Pandey-Vs.-The State of Jharkhand (Supra). Therefore, the petitioner is given liberty to approach the respondent no. 2, Secretary, Jharkhand State Electricity Board, Engineering Building, HEC, Dhurwa, Ranchi-4 for release of the admissible unpaid amount of Leave Encashment. He is also at liberty to raise his claim for payment of interest on death cum retirement gratuity. On receipt of copy of this order along with representation of the petitioner, the respondent no. 2, Secretary, JSEB shall proceed to take a decision within 10 weeks and also release the Leave Encashment amount in accordance with law within the same period. The respondent no. 2 shall also take decision on the issue relating to payment of interest on the pension and death cum retirement benefits on the ground of delay in accordance with law and pension rules within the same period. Accordingly, this writ application stands disposed of in the aforesaid term.