

(2009) 06 JH CK 0016

Jharkhand High Court

Case No: Writ Petition (S) No. 1019 of 2009

Shushila Devi

APPELLANT

Vs

The State of Jharkhand
and Others

RESPONDENT

Date of Decision: June 27, 2009

Acts Referred:

- Bihar Pension Rules, 1950 - Rule 189, 197, 200
- Bihar Reorganisation Act, 2000 - Section 85
- Constitution of India, 1950 - Article 283(2)
- Jharkhand Pension Rules, 2000 - Rule 189, 193, 194, 195, 197

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Advocate: Lalan Kumar Singh and Ajit Kumar Singh, for the Appellant; J.C. to A.G. for Respondent Nos. 1 and 2 and S. Shrivastava, for the Respondent

Judgement

D.N. Patel, J.

Learned Counsel appearing for the petitioner submitted that the present petition has been preferred mainly against an order passed by respondent No. 2 dated 27th May, 2002, at Annexure-3 to the memo of petition, whereby, a sizable amount of Rs. 97,204/- has been ordered to be deducted from the Death-cum-Retirement benefit of the husband of the present petitioner. This order has been passed ex parte, unilaterally and without giving any opportunity of being heard to the petitioner and, therefore, the same deserves to be quashed and set aside. Had an opportunity been given to the petitioner, it would have been pointed out that no such amount can be deducted, and the payment would have been made by the State of Jharkhand, in accordance with law. It is also submitted by the counsel for the petitioner that a report given by the office of the Accountant General is never permitting the respondent to bye-pass the procedure as established by the law, and the principles of natural justice should have been complied with, despite the recommendation, made by the Accountant General's office, and therefore, the impugned

order passed by the respondent No. 2 dated 27.5.2002, at Annexure-3 to the memo of petition, may be quashed and set aside and the amount already deducted may be returned to the petitioner with interest.

2. I have heard the learned Counsel appearing on behalf of the respondent-State who has submitted that nobody should be allowed to retain the benefit of its own wrong. On the basis of the report/letter given by or issued by the Accountant General's office, a decision has been taken by respondent No. 2 dated 27.5.2002, at Annexure-3, for deduction of an amount of Rs. 97,204/-. A detailed speaking order has been passed by respondent No. 2, with all calculations etc. and, therefore, there is no substance in this petition, and the same deserves to be dismissed.

3. I have heard learned Counsel Shri Sudershan Shrivastava, appearing on behalf of the office of the Accountant General-respondent No. 3, who has submitted that never a direction was given to the respondent-State by the Accountant General's office that without following the procedure, an amount may be deducted. It is always the duty of the State to follow the correct law and, at least, the bare minimum requirement of principles of natural justice, before withdrawing the benefit, already accrued to anybody. The learned Counsel for respondent No. 3 has pointed out that a notification has been published by the Finance Department of the State of Jharkhand bearing No. 1/V/P-02/2000/305 dated 16.2.2001, whereby, it has been declared that in exercise of powers conferred by Article 283(2) of the Constitution of India and in exercise of powers conferred by Section 85 of Bihar Reorganization Act, 2000, Bihar Pension Rules, 1950, will now be known as Jharkhand Pension Rules, 2000, and wherever the word(s) "Bihar" or "Bihar State" is used, the word(s) "Jharkhand" or "Jharkhand State" shall be read. This notification is given effect from 15th November, 2000. Counsel for respondent No. 3 pointed out that Rule Nos. 189, 197 and 200 of the Bihar Pension Rules 1950, are now known as Rule Nos. 189, 197 and 200 of the Jharkhand Pension Rules, 2000, and submitted that is per Rule 200 of the Jharkhand Pension Rules, 2000 (hereinafter referred to as "the Rules, 2000"), if there is any incorrect calculation in a pension or in the calculation of the services of any employee, the same will be returned with the pension papers to the competent authority with a report on the claim for the pension. Thus, the Accountant General's office has given report under Rule 200 of the Rules, 2000. Thus, the report of the Accountant General's office has to be implemented, in accordance with law, at least, after following the principles of natural justice, which includes opportunity of hearing, to be given to the concerned incumbent.

4. I have heard the learned Counsels, appearing on behalf of both the sides, and looking to the facts and circumstances of the case, I, hereby, quash and set aside the order passed by Respondent No. 2 dated 27.5.2002, at Annexure-3, for the following facts and reasons:

(i) The husband of the present petitioner was serving as Havaladar with the respondents. On 01.7.2001, he was promoted to the post of Constable and was serving as Constable

since then, without any objection by the respondents and was also paid salary, dearness allowances etc. for the promoted post.

(ii) It appears that thereafter upon his retirement, pension papers were prepared by the concerned department, in accordance with Rule 197 of the Rules, 2000, and were sent to the Accountant General's office with necessary calculations of pension etc. Rule 197 of the Rules, 2000, reads as under:

197. On receipt of the formal application, the head of the office shall immediately prepare a statement of the applicant's services in the second page of Pension Form 4 and arrange to verify them according to the following procedure:

(a)(i) In the case of a Government servant for whom a service book is maintained, if the service has been partly inferior (regarding whose service me records of the audit offices are sometimes incomplete) all the informations procurable shall first be gathered from official records. In respect of superior service, it will be sufficient to gather, in the first place, only such information as is easily procurable.

The information thus received shall then be forwarded to the Accountant-General along with the statement. The Accountant-General shall check the statement by his office records and furnish the necessary certificate of verification.

(ii) If there is any discrepancy, the Accountant-General shall detail the nature of such discrepancy, for instance, that the post which the applicant is stated to have filled during a certain period is shown in the audit office records to have been filled by another person. The authority submitting the statement shall settle such discrepancy to the satisfaction of the Accountant-General before allowing the disputable service to count for pension.

(iii) If the service claimed cannot be wholly verified from the records of the audit office, reference shall be made to the head of the office in which the applicant is shown to have served during the period in doubt unless the service in question has already been verified and a certificate of verification recorded in the service book.

(iv) If it be found impossible to verify the service otherwise a written statement of the applicant shall be taken on plain paper (See Indian Stamp Act II of 1889 Schedule I, No. 4(c). and such collateral evidence as may be procurable shall be collected, for instance certificates such as those given by a Government servant to a subordinate on his leaving the office and the testimony of contemporary Government servants....

(b) In the case of a Government servant for whom a service roll is maintained, the services, unless they have already been verified and a certificate of verification recorded on the service roll, shall be verified with reference to pay bills, acquaintance rolls or other relevant records, the procedure prescribed in Sub-clause (iv) of Clause (a) being adopted where necessary....

In view of the aforesaid Rule 197 of the Rules, 2000, especially as per Rule 197(a)(ii), upon receipt of the information forwarded to the Accountant General's office, along with statement, it is a duty of the Accountant General to check the statement. If there is any discrepancy as per Rule 197(a)(ii), the authority, submitting the statement, will settle the discrepancy to the satisfaction of the Accountant General.

(iii) As per Rule 200 of the Rules, 2000, a report will be given by the Accountant General's office, in case of incorrectness of calculation of the service and pension and will return the pension papers to the concerned department. Rule 200 of the Rules, 2000 reads as under:

200.(1) On receipt of the pension papers passed on to him under the provisions of Rule 195 or 199, the Accountant-General shall apply the requisite checks. If in cases in which the authority competent to sanction the pension has recorded its provisional recommendation under Cause (c) of Rule 195 or 199, the Accountant-General finds that the claim is in order, he shall prepare the payment order forthwith but not issue it more than a fortnight in advance of the date on which the Government servant is due to retire, intimating the fact of issue to that Authority. In other cases he shall certify as to the correctness of the calculations of service and pension and return the pension papers to the authority competent to sanction the pension with a report on the claim for pension and the rules applicable to the case. He shall retain the last pay certificate (see Rules 195 and 199) unless the pension is to be paid in another circle of audit in which case he shall forward the certificate to the Accountant-General of that circle along with a copy of the order sanctioning the pension.

(Emphasis supplied)

In view of the Rule 200(1), of the Rules, 2000, it is a duty of the Accountant General's office to give a report, if there is incorrectness or discrepancy in the calculations of the service and pension and perhaps this report is being acted directly by the State Government without reading further rules.

(iv) It appears that as per Rule 199 of the Rules, 2000, Head of the Department, from where the employee of the government has retired, will take necessary undertakings or indemnity bond etc., so that if any amount is paid in excess, it can be recovered. Rule 199 of the Rules, 2000 reads as under:

199.(a)(i) After completing the verification in the manner indicated in Rule 197 the head of office shall draw up the application in Pension Form 4.

(ii) He shall also follow the directions contained in Clauses (i) to (iv) of Rule 194 and obtain the certificate referred to in the Note below Rule 193 from the Government servant on a separate sheet of paper which shall be attached to the application form.

(iii) In any case in which it becomes necessary to resort to the procedure prescribed in Sub-clause (iv) of Clause (a) of Rule 197 he shall record on the application the exact nature of the investigation made and the conclusions arrived at.

(b) He shall then arrange, with the application, all the documents relied upon for the verification of the service claimed in such manner that they can be conveniently consulted, and forward them together with the Government servant's service book, or service roll, as the case may be, and the statement in the second me of Pension Form 4 duly completed up to the date and the last pay certificate. If necessary- see Rule 195(b) through the authority empowered to sanction the pension to the Accountant-General.

(c) The authority competent to sanction the pension shall follow the procedure indicated in Clause (c) of Rule 195.

(Emphasis supplied)

(v) As per Rule 202 of the Rules, 2000, if the employee is paid excess amount, then he could be called upon to refund such excess. A detailed procedure has been pointed out in Rule 202 of the Rules, 2000. But, it appears that in several cases, the officers of the State of Jharkhand are not following this Rule 202 of the Rules, 2000, and they are straight-way, unilaterally and ex party passing order for deduction of sizable amount from the retirement benefits. Rule 202 of the Rules, 2000 reads as under:

202. (1) Should the amount of pension granted to a Government servant be afterwards found to be in excess of that to which he is entitled under the rules, he shall be called upon to refund such excess. (For this purpose the Government servant concerned shall be served with a notice by the pension sanctioning authority, requiring him to refund the excess payments within a period of two months from the date of receipt by him of the notice. On his failure to comply with the notice the pension sanctioning authority shall order that such excess payments shall be adjusted by short payments of pension in future, in one or more installments, as the authority may order.

(2) If after the pension report was made by the Accountant-General any event occurs which necessitates recalculation of the amount of pension, the fact shall be promptly reported to the Accountant General by the head of the department or the head of the office, as the case may be. If no such event has occurred, the fact shall nevertheless be reported to the Accountant-General within a week from the date on which the Government servant retires.

(Emphasis supplied)

In view of the Rule 202(1) of the Rules, 2000, a notice must be served upon the government servant and thereafter the order should be passed by the concerned officer for refund of the excess payment and such refund ought to be made by the government employee, otherwise, it may be ordered to be deducted from the retirement benefits. This

procedure has not been followed, in the facts and circumstances of the present case by the respondent No. 2, while passing the impugned order dated 27.5.2002, at Annexure-3 to the memo of petition.

(vi) It also appears that in Rule 199(f) Pension Form No. 4 is referred. Looking to this Pension Form No. 4, there are several details about the services of the government employee and there is also a declaration in the form of certificate, which should be made by the government employee. The format of the said certificate is as under:

Certificate

(Vide Finance Department letter No. P1-1013-6054/F., dated 30th May, 1951.)

Should any amount whether due to excess or overdrawal of pay allowances or unrefunded balance of advances of pay, travelling allowance on tour, travelling allowances on transfer, Motor Car or Cycle, House building, etc., or dues on account of House rent or otherwise outstanding for recovery of any amount from me, I shall be called upon to pay.

Signature of the
retiring/beneficiary of the deceased
Govt. servant.

Designation and Department/Office.

The aforesaid certificate, reveals that the government employee bound himself that if any excess amount is paid or withdrawn, then he is duty bound to make the payment of the same. This certificate should be annexed along with the service records of the government employee to the office of the Accountant General and as stated hereinabove if any notice is given under Rule 202 of the Rules, 2000, and after giving an adequate opportunity of being heard to the government servant, an order can be passed by the concerned department for the payment of the excess amount paid to the government employee. Thus, looking to the over all scheme of the Jharkhand Pension Rules, 2000, which is adopted by the State of Jharkhand in pursuance of the notification, in exercise of powers u/s 85 of the Bihar Reorganization Act, 2000, it is a duty vested in the concerned department (to which government employee was belonging to) that after receiving the report from the Accountant General's office under Rule 200(1) of the Rules. 2000, they must follow the principles of natural Justice, under Rule 202 of the Rules, 2000. Issuance of notice is a must and opportunity of hearing ought to be given to the government servant, and thereafter only an order of refund of the amount can be passed and thereafter if it is not paid, then order of deduction from retirement benefits can be passed.

(vii) In view of the aforesaid rules, it appears that the Rules, 2000, which has been adopted by the State of Jharkhand in pursuance of the notification published in exercise of powers u/s 85 of the Bihar Reorganization Act, 2000, all care has to be taken by these rules to secure the repayment or refund of the excess amount paid to the government

employee. A detailed procedure is prescribed for the calculation of pension as well as of checking by the Accountant-General's office. As stated hereinabove the Accountant-General's office will try to resolve and dissolve the discrepancies calling upon the concerned department, but, if these discrepancies are not capable of being dissolved or resolved, a report shall be given under Rule 200(1) of the Rules, 2000, and Accountant General's office will return all the pension papers to the competent authority with report, and if the said report is to be implemented for getting refund of the excess amount paid to the government servant, then the procedure as laid down in the Rule 202 of the Rules, 2000 must be followed by the concerned government authority.

(viii) Report given by the office of Accountant General under Rule 200(1) of the Rules, 2000, is not a conclusive evidence. It cannot be encashed like a decree of a court. It is not a gospel truth. The report is mere suggestion or guide line to the Government Departments. It is given to awake the senses of the Government Department that amount requires to be deducted. But, before implementing the same, procedure established by law (i.e. as envisaged in Rule 202) must be followed. The report of Accountant General is not permitting to by pass the law or principles of natural justice.

Therefore, as required under Rule 202 of the Rules, 2000, before deducting any amount from retirement benefits, a notice must be given to the retired government employee or to his/her legal heir in case of death. Thereafter, upon hearing him an order of refund of excess amount paid can be passed. If the amount is not refunded, then order of deduction from retirement benefits can be passed. It is needless to say that order of deduction of amount must be speaking order i.e. it must contain reasons.

5. As a cumulative effect of the aforesaid facts, reasons and the Rules, 2000, there is a gross violation of the principles of natural justice, and a breach of Rule 202 of the Rules, 2000. No opportunity of being heard was given to the petitioner, and therefore, I hereby, quash and set aside the order passed by respondent No. 2 dated 27.5.2002, at Annexure-3 to the memo of petition, and the amount deducted shall be refunded to the petitioner with statutory interest. Initially the amount of interest will be paid by the State of Jharkhand to the petitioner, but, it will be deducted from the salary/retirement benefits of the concerned erring officer of the State after holding enquiry.

6. The Registry of this Court will send a copy of this judgment to the Chief Secretary of the State of Jharkhand, who upon receiving the same, will pass necessary order for his subordinates so that whenever there is a report of Accountant-Generars office, straight-way no amount can be deducted from the retirement benefit of the government servant, unless, as stated hereinabove, a notice is given and an opportunity of being heard is given, as time and again the matters are being filed by the retired government employees or upon their death, by their legal heirs/widows, and they are getting the amount after several years, If the amount is already deducted. Several time matters are admitted by granting stay against recovery. Thereafter, these matters will be finally disposed of after several years. Impugned orders will be quashed for violation of

principles of natural justice. Thereafter, though it is open for the Government to issue notice to retired employee, lots of will be the difficulties in service of notice, party might have expired or shifted to some other place or State or it might become time barred debt. To avoid all these, it is better to avoid such erroneous orders. Several matters have come before this Court for their adjudication involving same legal issue. To avoid the multifariousness of the petitions, necessary directions will be given by the Chief Secretary of the State of Jharkhand to the Secretaries of all the Departments by way of circulars/orders etc., which will percolate downward the vertical hierarchy of officers, so that similar error may not be repeated, henceforth.

7. The petition is allowed to the aforesaid extent, with no order as to Cost.