

**(2012) 04 JH CK 0070**

**Jharkhand High Court**

**Case No:** Writ Petition (S) No. 4487 of 2005

Kartik Prasad Deo

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

**Date of Decision:** April 24, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2012) 4 JCR 124 : (2012) 3 JLJR 106

**Hon'ble Judges:** P.P. Bhatt, J

**Bench:** Single Bench

**Advocate:** Umesh Pathak and N. Ganguli, for the Appellant;

**Final Decision:** Allowed

### **Judgement**

P.P. Bhatt

1. Heard the learned counsel for the parties. The petitioner, by way of filing this writ petition under Article 226 of the Constitution of India, has prayed for quashing/ set aside the order dated 17.3.2005 passed by the Deputy Commissioner, Deoghar and communicated under the signature of Establishment Dy. Collector, Deoghar and the order dated 14.6.05, whereby the concerned authorities were pleased to pass orders for adjustment of Rs. 16,000/- from the retiral benefits against the amount of leave encashment and directing him to deposit a sum of Rs. 25.363/- in the Block Development Office, Koron within a period of 15 days.

2. The case of the petitioner is that the petitioner was initially appointed as Kramchari in the office of Additional Collector, Dumka after following the due procedure provided for appointment and accordingly, he joined the said post on 23.1.1997. On completion of 58 years of age, the petitioner was superannuated on 31.1.1993 as a Kramchari from the office of the Circle Officer, Madhupur at Deoghar. The petitioner has rendered almost 36 years of his unblemished service and there is no adverse remarks and no departmental proceeding is pending against the

petitioner during his service career. It is further the case of the petitioner that after superannuation, the petitioner filed a writ petition being CWJC No. No. 11084 of 2000 before the Hon'ble Patna High Court on 29.9.2000 seeking direction to the concerned respondents for payment of leave salary for 240 days towards earned leave and a sum of Rs. 500.00 towards security money including the other legitimate dues. After bifurcation of State of Jharkhand, the said writ petition was transferred to the Jharkhand High Court and it was registered as CWJC No. 11084 of 2000(P). The said writ petition was disposed of observing that the petitioner to move a representation before the appropriate authority and pray for redressal of his grievance, if he is so entitled and upon receipt of such representation, the respondent authorities shall look into the matter and pass a reasoned order within stipulated time. Accordingly, the matter was processed by the respondent authorities and an amount of Rs. 28880/- was sanctioned towards his unutilized leave but a sum of Rs. 15000/- was deducted and balance amount of Rs. 13,880.00 was paid to the petitioner vide Cheque No. 787635 dated 22.7.04 which the petitioner received with protest on 25.7.04. It is further the case of the petitioner that while deducting a sum of Rs. 15000/- from unutilized leave amount of the petitioner, the petitioner was given no opportunity to show cause nor any reason has been assigned as to why a sum of Rs. 15000/- has been deducted from the due towards unutilized leave. Thereafter, vide letter, dated 17.3.2005, the petitioner was informed that out of a sum of Rs. 28,880/- sanctioned towards unutilized leave, a sum of Rs. 13,880/- has been paid to the petitioner after adjusting a sum of Rs. 15000/- towards advance of scheme No. 1/88-89 and subsequently the petitioner was asked to be present in the office of the Dy. Commissioner, Deoghar on 22.3.905 for being recorded his statement. Under the circumstances, the petitioner filed a contempt proceeding vide Cont, Case (Cvl.) No. 443 of 2005 for non-compliance of the order dated 13.4.2004 passed by this Court. Thereafter, vide order dated 14.6.05 of the Dy. Commissioner, Deoghar, the petitioner has been directed to deposit a sum of Rs. 25,363.00 in the office of the Block Development Officer, Koron, Thereafter, the petitioner gave legal notice and finally, he approached this Court for redressal of his grievance. Learned counsel for the petitioner has referred to and relied upon the Full Bench judgment delivered in the Case of State of Jharkhand & Ors. Vs. Padmalochan Kalindi reported in 2008(1) JCR-5 (Jhr.) (FB).

3. As against this, the learned counsel for the respondent State by referring paras 7 and 8 of the counter affidavit, filed by respondent Nos. 1 and 2 tried to justify the action taken by the respondent State. It is submitted that the adjustment of amount of leave encashment has been done on the basis of notification of Finance Department issued vide memo No. 8075 dated 17.8.78 wherein it is provided that amount of government can be adjusted from government servant's admissible amount in one installment and accordingly the amount has been adjusted from payment of unutilized leave encashment amount. It is also submitted that the petitioner was entitled to get Rs. 28,880.00 which was sanctioned towards unutilized

leave. The petitioner was paid a sum of Rs. 13,880/- on 22.7.04, and a sum of Rs 15000/- was withhold by the respondents concerned. This was due to the reason that the petitioner was given different works to be completed for which an advance of Rs. 1,03,735.00 was paid as advance, out of which, he has completed the work to the extent of Rs. 63,372.00, thus the balance amount of Rs. 40,363.00 remain as recoverable amount from his unutilized leave encashment. A sum of Rs. 15000.00 was adjusted and at present, a sum of Rs. 25,383.00 was ordered to be recovered from the petitioner vide Annexure- 2 to the writ petition. It is lastly submitted on behalf of the respondent that the order passed by the respondent authorities is legal and valid and the petitioner is required to make payment of outstanding amount.

4. Considering the rival submissions advanced by the learned counsel for the parties and from perusal of material facts on record, it appears that the present petitioner has been superannuated in the year 1993- the petitioner has rendered almost 36 years of his unblemished service and there is no departmental proceeding against the petitioner during his service career. It appears that after superannuation, the petitioner moved the Patna High Court for the purpose of getting the legally payable amount of leave encashment by way of filing CWJC No. 11084 of 2000 the said petition was subsequently transferred to the Jharkhand High Court after creation of the State and ultimately the said petition was disposed of by giving necessary direction to the petitioner to submit a representation justifying his claim and respondent authorities were directed to decide the said representation in accordance with law within stipulated period. Since the respondent authorities have not acted upon the said direction, the petitioner moved contempt proceeding before this Court and therefore, while taking action, the respondent authorities sanctioned the amount against the leave encashment but Rs. 15000/- has been adjusted out of the said legally due and payable amount of leave encashment and recovery of Rs. 25363.00 was ordered against the present petitioner. It appears that during the pendency of this writ petition, the petitioner died and his legal hirer is substituted. I have perused the judgment delivered in the Case of State of Jharkhand & Ors. Vs. Padmalochan Kalindi reported in 2008(1) JCR-5 (Jhr.) (FB) which is very much relevant for the purpose of deciding the present case. Para 32 and 33 of the said judgment read as under;

32. In Smt. Girish Kutnari Prasad, (supra), the Division Bench of this Court (Hon"ble P.K. Balsubramnyan, C.J. and Hon"ble" Tapen Sen, J) has held that something that is not due was given either because of negligence, collusion or fraud, the Accountant General can rectify the mistake committed either by omission or by commission by someone in the department. There cannot be any estoppel to seek any recovery of unauthorised payment made to an undeserving person. The fact that someone had made an error in giving a time bound promotion to the writ petitioner when it was no due, could not clothe him with any special right. However, it has not been held that any such amount would be recovered from the pensionary benefit of the

retired employee without following the procedure provided under Rule 43(b) of the Pension Rules or without following the procedure established by law for holding guilty of negligence, collusion or fraud or without holding any person responsible and liable for such mistake, negligence or fraud. The decision in the case of Smt. Girish Kumari Prasad, (supra), has absolutely no conflict with the decision of the Division Bench in State of Jharkhand and others v Baleshwar Singh and another, 2006(4) JCR 660 (Jhr: (Hon"bles S.J. Mukhopadhyaya and Permod Kohli, J) or another decision of this Court referred to above. In the instant case learned single Judge has decided the impugned order holding that no amount can be recovered from the pension except by an order passed under Rule 43(b) of the Bihar Pension Rules, 1950 as in the instant case, neither the State Government nor the competent authority has initiated any proceeding under Rule 43(b) of the said Rules while the petitioner was in service and even after 16 years of his retirement and even the proceeding under Rule 43(b) of the said Rules is bared by limitation and the same cannot be initiated now. He further held that no recovery can be made from the pension of the petitioner including the provisional final pension or from the gratuity. Learned single Judge has noticed that even recovery by way of suit and certificate proceeding is also time barred after lapse of 16 years from the retirement of the petitioner. The impugned order dated 2.9.1997 (Annexure-2) issued by the Accountant General as well as the letter dated 3.1.2005 (Annexure-3) issued by the Block Development Officer, Chandankeyari seeking recovery were quashed and the respondents were directed to refund the amount already recovered from the petitioner. The respondents were also directed to finalize the pension of the writ petitioner within the time prescribed and to pay the admitted arrears with interest @5% with cost. The said order of the learned single Judge has been passed after taking into consideration the relevant provisions and the same is in consonance with the other decisions of the Apex Court as well as of this Court, as noticed above. We find no illegality or infirmity in the impugned order of the learned single Judge. There is, thus, no merit in this letters patent appeal which is accordingly dismissed with cost of Rs. 10,000/- to be paid by the appellants to the V respondent.

33. It has been informed that the petitioner's final pension has been fixed during the pendency of this appeal. The appellants are directed to pay the arrears of pension and gratuity to the petitioner along with interest as directed by the learned single Judge within a period of two months from the date of receipt/production of a copy of this order, if not already paid. The respondents shall also refund the amount of the pension which was withheld and sought to be adjusted against the alleged dues within the said period. If the arrears amounts aforesaid are not paid to the V respondent within the said period, he shall be entitled to get interest @ 10% per annum on the amount of arrears from the date of his retirement till final payment

From the said judgment, it is clear that no amount can be recovered from the pension except by order passed under Rule 43-B of the Bihar Pension Rules and in the present case, there is nothing on record to show that during the entire service of

the petitioner any proceeding was initiated against the petitioner or any order has been issued under Rule 43-B of the Bihar Pension Rules 1950.

6. In view of the facts and circumstances of the present case and also in I" of the judgment delivered in the Case of State of Jharkhand & Ors. Padmalochan Kalindi reported in 2008(1) JCR-5 (Jhr.) (FB) the ord : dated 17.3.2005 and 14.6.2005 (Annexures-1 & 2 to the petition) required to be quashed and therefore accordingly the same are here ordered to be quashed and set aside and the amount if any recovered by respondent authorities may be paid to the legal heirs of the deceased wit: four weeks from the date of receipt/production of a copy of this order was admissible statutory interest, if any. With the aforesaid observations and directions, this writ petition is allowed.