

(2009) 07 JH CK 0063**Jharkhand High Court****Case No:** None

Urmila Devi

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: July 2, 2009**Hon'ble Judges:** Dhirubhai Naranbhai Patel, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

D.N. Patel, J.

The present petition has been preferred mainly against an order passed by respondent No. 4 dated 24th of November, 2001 (Annexure-5 to the memo of the present petition) whereby sizeable amount to the tune of Rs. 1,77,926/- is ordered to be deducted or is ordered to be recovered from the petitioner. Against this order, the present petition has been preferred mainly on the ground that the whole impugned order has been passed upon some report given by the department otherwise, no evidence has been levelled against the present petitioner. In view of the charges levelled against the present petitioner, the petitioner has denied the charges and department has put all assertions upon the charges and only on the basis of the report, the whole order has been passed. There is no evidence before the said officer i.e. before respondent No. 4, nor the copy of the report relied upon by the respondent No. 4 while passing the impugned order, was ever supplied to the petitioner. It is also submitted by the Counsel for the petitioner that retirement benefits have also not been paid to the petitioner and therefore, by quashing the impugned order at Annexure-5 dated 24th of November, 2001 passed by respondent No. 4, a direction may be given to the respondents to make the payment of legally payable amount towards retirement benefits, within stipulated time.

2. I have heard Counsel for the respondent Nos. 1, 2, 3, 4 and 6, who has submitted that the petitioner was given charge-sheet and thereafter, the inspection of all the

documents were given. The petitioner has also filed reply of the show cause notice and on the basis of the reply and the submissions of the department, an order has been passed by respondent No. 4 dated 24th of November, 2001 whereby the petitioner is directed to deposit the amount through bank draft to the tune of Rs. 1,77,926/- in the office of respondent No. 4. Charge No. 1 is proved, charge No. 2 is partly proved and charge No. 3 is also partly proved. The charges levelled against the present petitioner are at Annexure-3 to the memo of the petition. It is also submitted by the Counsel for the respondents that certificate case is going on against the present petitioner and therefore, upon getting decision of the certificate case exact amount can be ascertained, which is payable to the petitioner.

3. I have heard Counsel for the respondent No. 5, who has submitted that they have already filed affidavit and they have requested the Government to make the payment of pension, gratuity and commutation value of pension to the petitioner.

4. Having heard Counsel for both the sides and looking to the facts and circumstances of the case, it appears that-

(i) the petitioner was working as Forest Guard with respondent authorities w.e.f. 1968 onwards. Thereafter, it appears that a charge-sheet was issued to the petitioner and enquiry officer was also appointed for holding departmental enquiry and order has been passed by the enquiry officer at Annexure-5, which is under challenge, reveals the fact that the said enquiry officer has read the reply and has also read the submissions of the department and has accepted the submissions of the department, without any evidence. Impugned order at Annexure-5 is thoroughly a non-speaking order. No reasons have been assigned. How the charge No. 1 is proved and charge Nos. 2 and 3 is partly proved. Bare assertions by the department cannot be equated with an evidence and proof. This aspect of the matter has not been appreciated by the respondents while passing the impugned order at Annexure-5 dated 24th November, 2001.

(ii) the whole impugned order at Annexure-5 is based upon a report given by the department. Never a copy of the said report was ever supplied to the petitioner. When a reliance is placed on a document and when the impugned order is fully based upon the said report (given by the department), a copy of such report ought to have supplied to the petitioner and the petitioner cannot be kept in dark about the said report. On this ground also, the impugned order at Annexure-5 is deserved to be quashed and set aside.

(iii) the retirement benefits have also not been paid to the petitioner. Petitioner has retired on 30th November, 2001. Since then, he has not paid retirement benefits as stated by the Counsel for the petitioner on the ground that some settlement case is going on against the present petitioner. Retirement benefit cannot be withheld for an indefinite time. Retirement benefits are to be paid as early as possible to the retired person so that the same may be utilized by the retired employee.

5. As a cumulative effect of the aforesaid facts and reasons, I hereby quash and set aside the order passed by respondent No. 4 dated 24th of November, 2001 at Annexure-5 mainly for the reasons that the said order is a non-speaking order, based upon no evidence and whatever report is relied upon by the respondent No. 4, a copy whereof was never given or supplied to the petitioner and I hereby, direct the respondents to make the payment of the retirement benefits, as early as possible and practicable, preferably within a period of sixteen weeks from the date of receipt of a copy of the order of this Court. The State of Jharkhand is a party respondents. The settlement case is also to be decided by the State of Jharkhand Officers. Respondent No. 1 should decide whatever cases are pending against the present petitioner, so expeditiously that the aforesaid direction may be complied with by the respondent No. 1.

6. This writ petition is allowed to the aforesaid extent with no order as to costs.