

(2014) 07 JH CK 0077

Jharkhand High Court

Case No: W.P. (S) No. 3583 of 2009

Zainul Abedin

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 16, 2014

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Rajiv Nandan Prasad, Advocate for the Appellant; S. Srivastava, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the petitioner. State and the Accountant General.

2. The petitioner is aggrieved by the recovery of an amount of Rs. 78,034.18 from his leave encashment amount, which is said to have been undertaken by the respondent in 09.05.2011. He is also seeking direction upon the respondents to make payment of monetary benefits of 1st and 2nd ACP granted to him vide order dated 11.08.2008, Annexure-9, which is annexed to the reply of the counter affidavit.

3. The short facts of this case, which are relevant to be considered for determination of the issue raised herein are as follows:-

The petitioner was appointed as Lower Division Clerk and joined as such on 07.10.1966 at Industrial Training Institute (in short ITI), Chaibasa and after having worked at various places, retired on 31.05.2003 from ITI, Dhanbad. During the period of his posting as Clerk with additional charge of Store Keeper, Forbesganj (Bihar) in the year 1987, the institute was submerged in water due to heavy flood, which caused damage to certain items. Initially, the petitioner was asked to deposit an amount of Rs. 91,000/-, but on his representation, a committee was constituted to assess the damage and on the basis of the report of the said committee, vide letter dated 24.12.1998, the Principal of the ITI, Ranchi was informed by the respondent No. 7, the Principal, ITI, Forebesganj, Bihar to deduct Rs. 1612.35 from

the salary of the petitioner. The said amount was deducted from the salary of the petitioner through letter dated 12.02.1999. After his retirement on 31.05.2003, when his post retirement and other service dues were not finalized, the petitioner came to know that an audit was conducted in the year 1992-93 in respect of the items said to be damaged in the year 1987 in ITI Forbesganj, Bihar and shortage of Rs. 78034.18/- was directed to be recovered from the petitioner. However, the petitioner again represented on 14.10.2005 for reconsideration of the issue and placed relevant materials to be examined before a committee to exonerate him from the alleged liability. This committee, thereafter on 02.09.2007, Annexure-6, came to an opinion that if a fresh audit was conducted in respect of the period after taking into account the materials produced by the petitioner in respect of the items of the said store, it would lead to a conclusion that no further amount is recoverable and the audit objection can be dropped. However, according to the petitioner, after the said audit and also findings of the said committee, the respondents have issued notice on 31.08.2007 asking him to deposit the said amount of Rs. 78,034.18/-. The petitioner, however, did not deposit the said amount, which was deducted from his gratuity by the office of Accountant General on the direction of the respondent authority of the department and at the same time, the same amount was also deducted from admissible leave encashment of the petitioner on 09.05.2011. However, through letter dated 28.02.2013, Annexure-11, which is annexed to the 2nd supplementary affidavit of the petitioner, the respondent-department informed the office of the Accountant General that the same amount has been deducted twice from leave encashment and gratuity, should be refunded to the petitioner. Thereafter, an amount of Rs. 77,034/- has been refunded by the office of the Accountant General, as admitted by the petitioner. However, an amount of Rs. 78,034/- still remains to be refunded to the petitioner. On these facts, learned counsel for the petitioner has submitted that impugned action of the respondents is in teeth of the judgment rendered by the Full Bench of this Court in the case of [Dr. Dudh Nath Pandey Vs. The State of Jharkhand, The Secretary, Animal Husbandry and Fishery Department, Government of Jharkhand, The Joint Director \(Director\) \(Poultry\), Animal Husbandry Department and The Accountant General](#), and the same view has been upheld by Hon'ble Supremo Court in the judgment rendered in the case of [State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another](#), . He has also relied upon the judgment in the case of Nonui Topno vs. State of Jharkhand through its Secretary, Department of Health reported in 2007 (4) JLR 466.

4. According to the learned counsel for the petitioner, in the absence of any proceeding initiated under Rule 43(b) of the Jharkhand Pension Rules after his retirement, such an amount could not have been recovered without findings of any guilt thereupon. As such the amount could not have been recovered by the respondents from his pension, gratuity or leave encashment amount. Therefore, the impugned action of the respondents are in teeth of the settled law. It is not in dispute that the same has been done without any notice or findings of any guilt by

the respondents.

5. Learned counsel for the respondent-State has submitted that admissible post retirement dues i.e. pension and gratuity have been paid to the petitioner. He also submits that the benefits of ACP granted to him after his retirement could not be released due to non co-operation on the part of the petitioner in depositing the amount found in shortage by audit for the damage caused in stores at ITI Forbesganj (Bihar) in the year 1987. Therefore, the said amount has been recovered from leave encashment amount, when the petitioner has failed to deposit the amount even after direction issued vide letter dated 31.08.2007.

6. Learned counsel for the respondent-State, however, is not able to dispute that the said recovery has been made without any proceeding initiated under the Jharkhand Pension Rules or findings of any guilt against the petitioner as per the ratio laid down by the Full Bench judgment of this Court in the case of Dr. Dudh Nath Pandey (supra) relied upon by the petitioner.

7. Having heard learned counsel for the parties and having gone through the relevant materials on records, the inescapable conclusion that can be drawn is that the amount of Rs. 78,034/-, which is said to have been identified as shortage from the stores at ITI Forbesganj (Bihar) for the period 1987 on the basis of the audit, report, of 1992-93 has been recovered from the leave encashment amount of the petitioner after his retirement on 31.05.2003 in May, 2011 without any proceeding initiated under Rule 43(b) of the Jharkhand Pension Rules. It further appears that earlier the petitioner was asked to deposit the amount of Rs. 1612.35 upon the findings of a committee, which had been deducted from his salary in 1999 itself. After his retirement, another committee gave a different opinion that if the facts are reconciled with the documents, no amount would be found to be recovered from the petitioner. Even after findings of the second committee, no proceedings were initiated, but the amount has been recovered from the petitioner's leave encashment amount. The said amount recovered from leave encashment, is in teeth of the Full Bench Judgment of this Court. Therefore, the impugned action of the respondents cannot be sustained in the eyes of law. The respondents shall therefore refund the amount of Rs. 78,034/- to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

8. On determination of the aforesaid issue, the respondents have no reason to withhold the consequential benefit of revision in his salary and other pensionary dues dependent upon grant of ACP vide order dated 11.08.2008. The respondent would carry out the exercise to pay admissible arrears of salary and other post retiral dues upon such revision within a period of 12 weeks from the date of receipt of a copy of this order. The writ petition is allowed in the aforesaid manner.

9. Since the amount of Rs. 78,034/- withheld, was in teeth of the judgment rendered by the Full Bench of this Court in the case of Dr. Dudh Nath Pandey (Supra) as

affirmed by the Apex Court in the case of State of Jharkhand & Others vs. Jitendra Kumar Srivastava & Anr. (supra), the respondents would pay interest @ 8% per annum thereupon till it is actually paid.