

(2014) 05 JH CK 0062

Jharkhand High Court

Case No: W.P. (S) No. 394 of 2014

Surendra Prasad Thakur

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: May 16, 2014

Acts Referred:

- Bihar Reorganisation Act, 2000 - Section 53

Citation: (2014) 3 AJR 749 : (2014) 3 JLR 410

Hon'ble Judges: R. Banumathi, C.J; S. Chandrashekhar, J

Bench: Division Bench

Advocate: Manoj Tandon, Advocate for the Appellant; Rajesh Shankar, G.A, Advocate for the Respondent

Judgement

R. Banumathi, C.J. and S. Chandrashekhar, J.

Claiming payment of interest at the statutory rate on the amount of G.P.F. accumulated between the period April, 1997 and 18.08.2013, the petitioner has approached this Court for issuance of writ of mandamus to the respondents for payment of the same. The petitioner joined the Bihar Judicial Service as Munsif on 16.04.1975 and he was compulsorily retired from service by order dated 12.09.1996 under Rule 74(b)(ii) of the Bihar Service Code. He preferred a writ petition challenging the order of compulsory retirement vide C.W.J.C. No. 10110 of 1996 before the High Court of Judicature at Patna. The writ petition was dismissed by Patna High Court on 30.06.1998 and the Special Leave Petition being S.L.P. (C) No. 16164 of 1998 was also dismissed by the Hon'ble Supreme Court on 29.10.1998. In the meantime, during train journey, on 23.09.1998, the petitioner lost his entire service record and G.P.F. papers and he lodged a theft report at G.R.P., Chitranjan vide Station Diary Entry No. 477 of 1998 dated 23.09.1998. After he collected all relevant papers, the petitioner approached the District and Sessions Judge, Palamau at Daltonganj for final withdrawal of G.P.F. amount in the month of September, 2004 and his application was forwarded to the Jharkhand High Court vide letter dated

25.09.2004. As the petitioner was compulsorily retired from service before creation of the High Court of Jharkhand, his application was sent back to the District and Sessions Judge, Palamau at Daltonganj who forwarded the same vide letter dated 27.01.2005 to the Patna High Court. It is stated that the petitioner thereafter approached the Registrar General, Patna High Court for the aforesaid claim but without any result and therefore, he again wrote letter dated 07.08.2010 to the District and Sessions Judge, Palamau for issuing a reminder to the Patna High Court for payment of G.P.F. amount to him. Vide letter dated 29.08.2011, from the Patna High Court, the petitioner was communicated that since the letter dated 27.01.2005 of the District and Sessions Judge, Palamau has not been received in the High Court, he was directed to submit a fresh application for final withdrawal of G.P.F. accumulation. But before that, vide letter dated 15.04.2011, the Registrar General, Jharkhand High Court intimated the petitioner that his pensionary benefits would be paid by the Government of Jharkhand and accordingly, his pension papers were forwarded from the Jharkhand High Court to the District and Sessions Judge, Daltonganj vide letter dated 29.11.2010 for sending the same to the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand. The petitioner thereafter, again submitted papers for payment of G.P.F. amount in the Office of the District and Sessions Judge, Palamau with a request to forwarding the same to the concerned authority at Ranchi. The Registrar General, Jharkhand High Court vide letter dated 24.08.2011 again forwarded the pension papers (in duplicate) and G.P.F. withdrawal application (in triplicate) to the District and Sessions Judge, Palamau for forwarding the same to the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand. The Registrar General of Jharkhand High Court again wrote letter dated 21.12.2012 to the Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand with a request to look into the matter pertaining to pension and post retiral benefits of the petitioner. And finally, vide letter dated 23.01.2013, the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, accorded approval for withdrawal of final G.P.F. and accordingly, the District Provident Fund Officer, Daltonganj (Palamau) issued the necessary pay slip on 19.08.2013 for an amount of Rs. 3,90,908/-. The petitioner thereafter, vide letters dated 18.09.2013 and 07.11.2013 addressed to the Deputy Commissioner, Daltonganj through, District Provident Fund Officer, Daltonganj raised a claim for payment of interest on the amount of Rs. 3,90,908/- from April, 1997 to 18.08.2013. In these facts, the petitioner has approached this Court seeking payment of interest on the G.P.F. amount.

2. Mr. Manoj Tandon, the learned counsel appearing for the petitioner submitted that, since the amount of G.P.F. was lying with the respondents from April, 1997 to 18.08.2013 the petitioner is entitled for payment of interest on the amount of Rs. 3,90,908/- for the said period. Relying on order dated 07.05.2007 in W.P.(S) No. 7391 of 2006 and order dated 04.12.2001 in W.P.(S) No. 4557 of 2000, the learned counsel

for the petitioner has submitted that since there is inordinate delay of 16 years, after which the G.P.F. amount was paid to the petitioner, he is entitled for interest for the said period. It is further submitted that, after the petitioner reconstructed the record, he submitted the application for final withdrawal of G.P.F. in September, 2004 however, due to laches on the part of the respondents, the final payment could be made only on 19.08.2013 and therefore, statutory interest on the G.P.F. amount would be payable to the petitioner. The learned counsel appearing for the petitioner relied on the following decisions: [Akhileshwar Prasad and Others Vs. Jharkhand State Electricity Board and Others,](#).

3. Mr. Rajesh Shankar, the learned Government Advocate appearing for the respondents resisted the claim of the petitioner and submitted that there is inordinate delay and laches on the part of the petitioner and on this ground alone, the writ petition is liable to be dismissed. It is submitted that the petitioner who was compulsorily retired from service on 12.09.1996 from the Bihar Judicial Service, cannot maintain the writ petition in the High Court of Jharkhand. It is further submitted that though, the petitioner has been paid his retirement benefits by the State of Jharkhand, in view of statutory provisions under Section 53 read with Schedule VIII of the Bihar Reorganization Act, 2000 the liability to pay the retirement benefits of an employee superannuating prior to the appointed date, that is, 15.11.2000, would be of the State of Bihar and therefore, the petitioner, as a matter of right, cannot claim payment of interest from the respondent-State of Jharkhand, even if it is found that interest on G.P.F. amount is payable to him.

4. We have considered the submission of the learned counsel appearing for the parties and perused the documents on record.

5. Admittedly, the petitioner joined the Bihar Judicial Service as Munsif on 16.04.1975 and he was compulsorily retired from service on 12.09.1996, following the recommendation of the Patna High Court. At the time when the petitioner joined the service and as also at the time when he was compulsorily retired from service, the petitioner was working within the territorial jurisdiction of the Patna High Court and he was an employee of the State of Bihar. The petitioner while posted as Chief Judicial Magistrate, Palamau, a place which now falls within the territorial jurisdiction of the High Court of Jharkhand, was compulsorily retired from service on 12.09.1996 and he had approached the High Court of Judicature at Patna, Patna Bench in C.W.J.C. No. 10110 of 1996, though at that time, Patna High Court had a Circuit Bench at Ranchi.

6. In September, 2004, the petitioner submitted application for final withdrawal of G.P.F. accumulation to the District and Sessions Judge, Palamau and the same was forwarded to the Patna High Court vide letter dated 27.01.2005 and thereafter, the petitioner is said to have contacted the Registrar General of Patna High Court. However, when no action was taken the petitioner again requested the District and Sessions Judge, Palamau vide letter dated 07.08.2010 for issuing reminder to the

Patna High Court. It is thus apparent that, the petitioner was conscious that his retiral benefits would be paid by the State of Bihar. Under the Bihar Reorganization Act, 2000 the liability in respect of pension and other retiral benefits, has been dealt with under Section 53 which reads as under,

53. Pensions.- The liability of the existing State of Bihar in respect of pensions and other retirement benefits shall pass to, or be apportioned between, the successor States of Bihar and Jharkhand in accordance with the provisions contained in the Eighth Schedule to this Act.

7. The Eighth Schedule of the Bihar Reorganization Act, 2000 is as under,

APPORTIONMENT OF LIABILITY IN RESPECT APPORTIONMENT OF PENSIONS AND OTHER RETIREMENT BENEFIT

1. Subject to the adjustments mentioned in paragraph 3, each of the successor State shall in respect of pension and other retirement benefits sanctioned before the appointed date, pay from their respective treasuries.

2. Subjects to the said adjustments, the liability in respect of pensions and other retirement benefits of officers serving in connection with the affairs of the existing State of Bihar, who retire or proceed on leave preparatory to retirement before the appointed day, but whose claims for pensions and other retirement benefits are outstanding immediately before that day, shall be the liability of the State of Bihar.

3. Subject to the said adjustments, sanctions of such pension and other retirement benefits by the competent authority may be given in those cases, in which their office falls in the territory of Jharkhand State.

4. There shall be computed, in respect of the period commencing on the appointed day and ending on the 31st day of March of that financial year and in respect of each subsequent financial year, the total payments made in the successor states in respect of pensions and other retirement benefits referred to in paragraphs 1 and 2, the total representing the liability of the existing State of Bihar in respect of pensions and other retirement benefits shall be apportioned between the successor States in the ratio of number of employees of each successor State and any successor State paying more than its due share shall be reimbursed the excess amount by the successor State or State paying less.

5. The liability of the existing State of Bihar in respect of pensions and other retirement benefits granted before the appointed day and drawn in any area outside the territories of the existing state shall be the liability of the State of Bihar paying subject to adjustment, to be made in accordance with paragraph 3 as if such pensions and other retirement benefits had been drawn in any treasury in the State of Bihar under paragraph.

6. The liability in respect of the pensions and other retirement benefits of any officer sewing immediately before the appointed day in connection with the affairs of the existing State of Bihar and retiring on or after that day, shall be that of the successor State granting him the pension and other retirement benefits, but the portion of the pension and other retirement benefits attributable to the service of any such officer before the appointed day in connection with the affairs of the existing State of Bihar shall be allocated between the successor States in the population ratio and the Government granting, the pension and other retirement benefits shall be entitled to receive from each of the other successor States its share of this liability.

7. Any reference in this Schedule to a pension and other retirement benefits shall be construed as including a reference to the commuted value of the pension and other retirement benefits.

8. In [Akhileshwar Prasad and Others Vs. Jharkhand State Electricity Board and Others,](#) in view of the agreement reached between the Jharkhand State Electricity Board and the Bihar State Electricity Board and subject to final accounting/adjustment of their liabilities, the respective Boards were directed to make payment of retiral benefits to the employees who had retired from the offices falling within their territorial jurisdiction. This decision is also not an authority on the point that if the employee has retired prior to the appointed day from an office now falling under the territory of the State of Jharkhand, it is the liability of the State of Jharkhand to pay all retiral dues to the employee.

9. In "Bharati Prasad Thakur Vs. Sidhu Kanhu University, Dumka", reported in 2002 (1) JLR 491, leaving the matter open in so far as, the liability of the State of Bihar and the State of Jharkhand was concerned, since the Godda college which falls under the Sidhu Kanhu University and which now falls under the territory of State of Jharkhand, a direction was given to the State of Jharkhand and Sidhu Kanhu University to make payment of pension to the writ petitioner.

10. The Case of "Mahesh Mistry Vs. Ranchi University, Ranchi through Registrar & Others", reported in 2006 (4) JLR 245, was decided in view of the decision in "Bharati Prasad Thakur Vs. Sidhu Kanhu University, Dumka" (supra).

11. In "Ramavtar Prasad Gupta Vs. Jharkhand State Electricity board, Ranchi and Others", reported in 2006 (3) JLR 287, this Court directed the authority which used to pay the salary and which was competent to sanction pension, even when it was the State of Bihar, to sanction and pay retiral dues of the employee subject to adjustment in accordance with the provisions of Bihar Reorganization Act, 2000.

12. In "Damodar Kumar Ojha Vs. State of Jharkhand and Others", reported in 2006 (2) JLR 516 the retiral benefits of the pensioner who was working as forester in the State Trading Division Chatra South, Chatra, erstwhile Bihar State, was directed to be paid. The Court further observed, "but still the question is who shall pay the amount to concerned treasury in cases not covered by Clause 2 of the VIIIth

Schedule, ordinarily it is the State of Bihar."

13. In most of the decisions cited by the the learned counsel for the petitioner, even the statutory provisions under the Bihar Reorganization Act, 2000 have not been noticed by the Court. In "Bharati Prasad Thakur Vs. Sidhu Kanhu University, Dumka" (supra) the learned Single Judge of this Court specifically declared in para 10 that the issue is left open. And, In "Akhileshwar Prasad Vs. Jharkhand State Electricity Board" (supra) a Division Bench of this Court having considered the guidelines contained in letter dated 06.01.2004 and the agreement dated 27.12.2003 between the J.S.E.B. and B.S.E.B made an order for payment of pensionary dues to the employees, retired/retiring from the areas, now falling under their jurisdiction, subject to final accounting/adjustment of their liabilities and also subject to the decisions of the Hon'ble Supreme Court in Suit No. 01 of 2005. Mr. Rajesh Shankar, the learned counsel appearing for the respondent-State of Jharkhand has relied on a decision of Patna High Court in [Mithilesh Kumar Singh @ Molan Singh Vs. State of Bihar and Others](#), whereunder also the Court has held that, in view of the statutory provision under the Bihar Reorganization Act, 2000, the liability to pay the pensionary and other retiral benefits to an employee retiring prior to 15.11.2000 would be of the State of Bihar.

14. Now coming to the facts of the case, the petitioner who was compulsorily retired from service with effect from 12.09.1996, for the first time approached the District and Sessions Judge Palamau in September, 2004. Though the application of the petitioner was forwarded to the Registrar General Patna High Court vide letter dated 27.01.2005, the petitioner again approached the District and Sessions Judge, Palamau only vide letter dated 07.08.2010 requesting him to send a reminder to the Patna High Court for withdrawal of the G.P.F. amount. Vide communication dated 29.08.2011, the petitioner was directed by the Registrar General, Patna High Court to send a fresh application for final withdrawal of G.P.F. accumulation, in triplicate, duly signed by the District and Sessions Judge, Palamau however, from the pleadings on record, it is apparent that the petitioner did not take any step in this regard. From letter dated 15.04.2011 by the Registrar General Jharkhand High Court it appears that though, the petitioner had approached the District and Sessions Judge, Palamau vide letter dated 07.08.2010, he again approached Jharkhand High Court vide letter dated 31.01.2011. A copy of letter dated 31.01.2011 is not on record nor, the petitioner has disclosed in what circumstance he had approached Jharkhand High Court vide letter dated 31.01.2011, at the time when his application for final withdrawal of G.P.F. amount was pending consideration before the Patna High Court. It further appears from letter dated 15.04.2011 that the petitioner had not taken necessary steps for release of his pension etc. and the same was forwarded by the Registrar General, Jharkhand High Court vide letter dated 29.11.2010 to the District and Sessions Judge, Palamau. From communication dated 24.08.2011 from the Registrar General Jharkhand High Court it appears that the District and Sessions Judge, Palamau had again returned the G.P.F. withdrawal

application of the petitioner vide reference dated 02.08.2011. A copy of letter dated 02.08.2011 has also not been brought on record by the petitioner and thus, the content of the said letter is not disclosed in the present proceeding. It appears that letter dated 27.06.2012 the Officer on Special Duty, Department of General Administration, Bihar had written, a reference of which has been made in letter dated 21.12.2012 from the Registrar General Jharkhand High Court to the Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, a copy of which was forwarded to the petitioner also however, the letter dated 27.06.2012 has not been brought on record by the petitioner. From the aforesaid, it is apparent that the petitioner has suppressed letters dated 29.11.2010, 02.08.2011 and 27.06.2012. The contents of those letters only could have disclosed whether the petitioner had been prosecuting his claim for final withdrawal of G.P.F. amount before the authorities of the State of Jharkhand bona fide and diligently. From the above narration of the facts we find that there is gross laches on the part of the petitioner. We find no merit in the writ petition claiming interest on the G.P.F. accumulation from April, 1997 to 18.09.2013 and accordingly, the writ petition is dismissed.