

(2015) 145 FLR 949
Jharkhand High Court
Case No: Writ Petition (S) No. 3106 of 2013

Kali Rai	Vs	APPELLANT
Mineral Area Development Authority and Others		RESPONDENT

Date of Decision: April 23, 2015

Citation: (2015) 145 FLR 949

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Vaibhav Kumar, for the Appellant; Bhawesh Kumar, Ravi Kumar and Rahul Kamlesh, Advocates for the Respondent

Final Decision: Allowed

Judgement

Aparesh Kumar Singh, J.
Heard Counsel for the parties.

Petitioner served as a Khalasi under the respondent-Mineral Area Development Corporation, Dhanbad in Water Supply Sub-Division, Jharia-II under the Executive Engineer, Water Supply, M.A.D.A. Petitioner, however was served with a notice of retirement vide Annexure-1 dated 20.3.2010 issued by the Executive Engineer, Water Supply, M.A.D.A himself stating therein that as per the date of birth recorded in the Service Book i.e. 1.7.1948, he should have retired by 1.7.2008, however in the absence of relevant personal files of the petitioner, notice of retirement could not be given to him. Accordingly, it was indicated that petitioner should treat him as superannuated w.e.f. 1.7.2008.

Petitioner's case is that he continued to work thereafter till 30.3.2010 i.e. the date of issuance of notice and since salary is being paid in arrear because of weak financial condition of M.A.D.A, salary beyond 30.6.2008 was only paid up to 30.4.2009 and thereafter he worked without any salary till 30.3.2010. When the post retirement dues of

the petitioner were being determined pursuant to the order passed in W.P.S. No. 4548 of 2010 dated 22.7.2011, respondent, Managing Director, M.A.D.A while admitting post retirement dues under different heads due, however went on to hold that petitioner by resorting to fraud has continued in employment beyond his date of retirement i.e. 30.7.2008 and availed of salary till April, 2009. Therefore, salary availed by the petitioner for the period from July, 2008 to April, 2009 totaling Rs. 96,080/- is recoverable from the petitioner, which would be deducted from the other admissible dues. That is why petitioner is before this Court challenging the part of the said order and for release of salary for the period from 1.5.2009 to 31.3.2010.

2. Learned Counsel for the petitioner submits that there is no finding of fraud or misrepresentation on the part of the petitioner in any inquiry and neither he has been given any show-cause before such determination has been made by the Managing Director, M.A.D.A. In such circumstance, the petitioner who was a simple Class-IV employee working as Khalasi and whose service record were in the custody of Controlling Officer i.e. the Executive Engineer, Water Supply Division, M.A.D.A and the notice of retirement has also been issued on 30.3.2010, the respondents cannot recover the salary availed by the petitioner after having discharged the duty till 30.3.2010 in the conscious knowledge of the respondent- authorities. Learned Counsel for the petitioner has relied upon a judgment rendered by this Court in the case of Pankaj Kumar v. State of Jharkhand and others passed in W.P.S. No. 3566 of 2014 dated 15.4.2015 where reliance has been placed on a judgment rendered by the Hon"ble Supreme Court in the case of [State of Bihar and Others Vs. Pandey Jagdishwar Prasad](#), (2009) 120 FLR 352 : (2008) 12 JT 564 : (2009) 2 LLJ 3326 : (2009) 3 SCC 117 : (2009) 1 SCC(L&S) 589 : (2009) 2 SLJ 502 : (2009) 3 SLR 449 : (2008) 1 UJ 197 .

3. Learned Counsel for the respondent-M.A.D.A on the basis of instructions contained in their counter affidavit submitted that the age of petitioner was determined in the year 1996 as per the certificate issued by the Chief Medical Officer, Dhanbad dated 24.1.1996 and was held to be of 48 years of age on the date of medical examination. This certificate was annexed as part of service book of the petitioner and reckoning his age thereupon petitioner had reached the age of retirement on 30.6.2008. Petitioner was conscious of the age determination as he had countersigned the report of the Committee. Therefore, petitioner has unauthorizedly worked for 20 months in the services of the authority, hence the amount of Rs. 96,080/- availed by the petitioner has been rightly deducted from his legally payable dues. Rest legally admissible dues amounting to Rs. 5,19,000 and odd has already been paid to him. Therefore, there is no infirmity in the impugned order and the aforesaid amount of salary availed by the petitioner is liable to be recovered from his admissible dues.

4. I have heard Counsel for the parties and gone through the relevant materials on record. As the chronology of facts noticed herein above discloses, petitioner who was a Class-IV employee working as Khalasi under the Officer of Executive Engineer, Water Supply Division, M.A.D.A was served with a retirement notice only on 30.3.2010

(Annexure-1) admittedly by the respondent-Executive Engineer and it was also admitted that retirement notice could not be given earlier because the necessary personal service record of the petitioner could not be traced. It is therefore beyond doubt that the service record of the petitioner was not lying within the custody of the petitioner. The respondent-M.A.D.A has a practice to serve notice of retirement upon any such employee who is supposed to reach the age of superannuation. In the instant case, even though as per the service records of the petitioner, he would have reached the age of superannuation on 30.6.2008 but the Controlling Officer failed to issue notice and in fact continued to take work from the petitioner till 30.3.2010. However, salary beyond 30.6.2008 was paid up to April, 2008 due to weak financial condition of M.A.D.A. However, as it appear there was no finding recorded in any inquiry conducted into the aforesaid fact as to whether petitioner had collusively and by resorting to fraud, misrepresentation continued to discharge his duty under M.A.D.A beyond the date of retirement i.e. 30.6.2008.

5. In such circumstance, if the respondents themselves have issued notice of retirement on 30.3.2010 and the petitioner has also discharged his duty after the date of retirement and there are no finding of fraud, misrepresentation or collusion against the petitioner, neither any action has been taken by the Controlling Authority against any other officer/employee for such act, it would not be proper for the respondents to deduct the aforesaid amount of salary of Rs. 96,080/- paid to the petitioner for the period from June, 2008 to April, 2009 from the admissible post retirement dues.

6. In this regard the issue involved in the instant case appears to be fully covered by the judgment rendered by this Court in the case of Pankaj Kumar v. State of Jharkhand and others (supra) relying upon the judgment rendered by the Hon"ble Supreme Court in the case of State of Bihar and others v. Pandey Jagdishwar Prasad (supra). The relevant paras 23, 24 and 30 of the said judgment rendered by the Hon"ble Supreme Court are being quoted herein below:--

"23. Without going into the question whether the appellant was justified after completion of two years from the actual date of retirement to deduct two years" salary and other emoluments paid to the respondent, we may say that since the respondent had worked during that period without raising any objection from the side of the appellant and the appellant had got works done by the respondent, we do not think that it was proper at this stage to allow deduction from his retiral benefits, the amount received by him as salary, after his actual date of retirement.

24. Considering the fact that there was no allegation of misrepresentation of fraud, which could be attributed to the respondent and considering the fact that the appellant had allowed the respondent to work and got works done by him and paid salary, it would be unfair at this stage to deduct the said amount of salary paid to him. Accordingly, we are in agreement with the Division Bench decision that since the respondent was allowed to work and was paid salary for his work during the period of two years after his actual date

of retirement without raising any objection whatsoever, no deduction could be made for that period from the retiral dues of the respondent.

30. There is another aspect in this matter. Although we have directed that the excess amount paid for two years to the respondent as salary cannot be recovered from the respondent, but we make it clear that for fixing the retiral benefits, the period of two years in respect of which salary was received by the respondent cannot be taken into consideration and the respondent would be entitled to fixation of retiral benefits as on the date of his superannuation i.e. 28.2.2002".

7. In such circumstance, part of the impugned order dated 30.3.2010 whereby deduction of an amount of Rs. 96,080/- from the admissible post retirement dues of the petitioner has been made is not sustainable in law as well as on facts. Accordingly, the same is quashed. The amount so recovered by the respondent-M.A.D.A be released in favour of the petitioner without any delay.

8. Since the respondents themselves have issued the notice of retirement on 30.3.2010 and petitioner admittedly has discharged his duty till 30.3.2010 and ceased to do so immediately on service of such notice, the respondent-M.A.D.A shall also release the admissible salary for the period outstanding from May, 2009 till 30.3.2010, more so for the reason that petitioner being Class-IV employee has served the respondent-M.A.D.A till that period without any complaint and to the satisfaction of his superior. However, such payment shall be made as per the scheme applicable in M.A.D.A for payment of arrears of salary and admissible post retirement dues in installment apart from any other admissible dues. The writ petition is accordingly allowed in the aforesaid terms.