

Suresh Choudhary Vs. Forest

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Court : Jharkhand

Decided On : Jun-16-2017

Appellant : Suresh Choudhary

Respondent : Forest

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 4173 of 2016
----- Suresh Choudhary, son of Late Ram Charitra Choudhary, resident of Dubey Morhatia, P.O & P.S. - Garhwa, District Garhwa. ... Petitioner Versus 1.The State of Jharkhand through the Secretary, Department of Forest & Environment, Govt. of Jharkhand, Nepal House, Doranda, P.O & P.S. - Doranda, District- Ranchi. 2.The Principal Chief Conservator of Forest, Van Bhawan, Doranda, P.O & P.S. - Doranda, District- Ranchi. 3.The Regional Chief Conservator of Forest, Medininagar, P.O & P.S. -Medininagar, District - Palamau. 4.The Conservator of Forest, Medininagar, P.O & P.S. - Medininagar, District - Palamau. 5.The Divisional Forest Officer, Medininagar, P.O & P.S. - Medininagar, District - Palamau. 6.The Accountant General, Jharkhand, P.O & P.S.- Doranda, District- Ranchi. Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Rahul Kumar, Advocate. For the Respondents : Mr. Ashish Kumar Thakur, J.C to S.C. (L&C) Mr. Gautam Rakesh, Advocate ----- C.A.V on 09.03.2017 Delivered on 16 /06/2017 Per Pramath Patnaik, J.: In the accompanied writ application, the petitioner has inter alia prayed for quashing office order dated 04.06.2016 whereby the representation of the

petitioner in pursuance to order dated 29.02.2016 passed in W.P. (S) No. 1024 of 2016 as against recovery from the retiral dues of the petitioner on account of wrong fixation of the pay-scale and grant of A.C.P benefit of the petitioner has been rejected and the order of recovery has been upheld and prayer has been made for quashing letter dated 20.11.2015 whereby an amount of Rs. 7,52,170/- has been directed to be recovered from retiral benefit of the petitioner and petitioner has further prayed for direction upon respondents to 2 pay the leave encashment, which has been held up for adjustment of recovery amount on account of so-called wrong fixation and further prayer has been made for direction upon the respondent to grant 3rd MACP with effect from due date.

2. The facts, in brief, is that initially the petitioner was appointed as Forest Guard on 07.10.1974 and retired from the post of Forester on 31.01.2014. It has been averred that though the petitioner completed more than 30 years of service but he has not been paid 3rd MACP, as applicable and enforced in the State of Jharkhand. It has been averred that treating the petitioner to be a non-matriculate, vide letter dated 20.11.2015, his pay-scale was revised and direction was issued for recovery of Rs. 7,52,170/- from the leave encashment, gratuity and pension of the petitioner. Being aggrieved, the petitioner knocked the door of this Court by filing W.P. (S) No. 1024 of 2016, which was disposed of vide order dated 29.02.2016 with a direction to respondent no. 2 to consider the matter and pass a reasoned order. Pursuant thereto, the petitioner filed a representation before respondent-authority, which was rejected vide order dated 04.06.2016 and the order of recovery was upheld.

3. Learned counsel for the petitioner submitted with vehemence that petitioner being fully eligible in terms of the existing rules as on date was promoted to the higher post and had been granted A.C.P, hence, the action of the respondents in withdrawing the same and directing for recovery of excess paid amount is arbitrary and unjustified. It has further been submitted that Fitment Appellate Committee has only recommended for 3 enhancing the educational qualification for the purposes of recruitment and accordingly rules have been framed, but, the same cannot be retrospectively applied. It has further been submitted that the impugned order of recovery from the retiral dues is not legally sustainable particularly when

there had been no fraud or misrepresentation on the part of the petitioner. Furthermore, after retirement, recovery without resorting to Rule 43 (b) cannot be made and in the case at hand the impugned order has been issued without issuance of notice, which is violative of principles of natural justice. In support of his submission, learned counsel for the petitioner referred to the decision rendered in the case of State of Punjab & Ors Vs. Rafiq Masih (White washer) & Ors as reported in (2015) 4 SCC334 4. Reiterating the averments made in the counter affidavit, learned counsel for the respondents submitted that while the petitioner was posted in Garhwa South Forest Division, a departmental proceeding was initiated against the petitioner in which he was held guilty of illegal felling of trees and according penalty of Rs. 60,000/- was imposed upon the petitioner. Learned counsel for the respondents further submitted that the petitioner was granted 1st and 2nd A.C.P after completion of 24 years of service vide office order dated 3.06.2013 in the pay-scale of Rs. 4000-4000 and Rs. 5500-9000, but, on scrutiny, it was found that since the petitioner is a non-matriculate and does not fulfill the qualification as laid down in the condition in resolution dated 14.08.2002, hence, office order dated 22.01.2015 was issued, in which, pay-scale of the petitioner was corrected and it was found 4 that Rs. 6,92,170/- was paid excess to the petitioner. It has further been submitted that letter dated 20.01.2015 for recovery of Rs. 7,52,170/- has been issued in accordance with laws and guidelines issued for granting ACP/MACP, in which, it was found that pay-scale of the petitioner has been wrongly fixed, hence, the order of recovery needs no interference. It has further been submitted that benefit of A.C.P was extended with the condition that if any irregularity would be found in pay-fixation, the same shall be recovered from the incumbent, hence, the action of the respondents cannot be said to be arbitrary.

5. Having heard learned counsel for the parties at length and on perusal of the record, I am of the considered view that the petitioner has been able to make out a case for interference for the following facts, reasons and judicial pronouncements: (i).Admittedly, the petitioner retired on 31.01.2014 and after his retirement, vide order dated 20.11.2015 an amount of Rs. 7,52,170/- has been directed to be recovered from the retiral dues of the petitioner. On close scrutiny of impugned order dated 20.11.2015, it appears that Rs. 6,86,004/- is stated to be on account of wrong fixation of pay-scale while grant A.C.P/MACP; Rs. 6166/- is stated to be

paid excess to the petitioner as per letter dated 10.10.2015 and Rs. 60,000/- is stated to be due against imposition of punishment of fine arising of Departmental Proceeding. However, during course of argument, the learned counsel for the petitioner, on instruction, very fairly submitted he is not pressing the prayer against recovery against fine of Rs. 5 60000/- and excess payment of Rs. 6000/- as shown in impugned order dated 20.11.2015. Hence, now the question of recovery of Rs. 6,86,004/- remains to be decided. (ii).It is admitted case that order of recovery has been passed after the retirement of the petitioner. It is settled principle of law that after retirement no amount is liable to be recovered without taking recourse of the relevant provision of Pension Rules, in particular Rule 43 (b), which comes to rescue to the retired employee. For better appreciation, Rule 43 (b) of the Pension Rule is quoted herein below: 43(b).The State Government further reserve to themselves the right of withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the petitioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or have caused pecuniary loss to Government by misconduct or negligence, during his service rendered on re-employment after retirement. Admittedly, in the case at hand, no such proceeding was initiated and further it is not the case of the respondents that any fraud or misrepresentation has been made by the petitioner in getting enhanced pay-scale, if so. Hence, the impugned order is not legally sustainable in the eye of law. (iii).View of this Court gets fortified by the decision of Honble Apex Court in the case of Kusheshwar Nath Pandey Vs. State of Bihar & Ors as reported in (2013) 12 SCC580 wherein the Honble Apex Court has been pleased to hold that excess payment which has been made, cannot be recovered without taking recourse to Rule 43(b). The Honble Apex Court in the case of State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Ors (Supra), has enumerated the instances relating to recovery of excess payment and postulated some of situations where the recovery after retirement is impermissible and petitioner being class III employee falls in that category. (iv).So far as prayer of petitioner for grant of 3rd ACP is concerned, it is established principle of law that to extend the benefit of MACP/ACP, Rules of Promotion is to be followed. Admittedly, in the case at hand, in view of the fact that there was

proceeding against the petitioner, which culminated to imposition of fine of Rs. 6000/-. Further, in this regard, the State Govt vide Circular dated 01.09.2009 under Annexure 1 in Clause 14 has in unequivocal terms has stated that while granting ACP/MACP Rules of General Promotion is to be followed. For ready reference, the relevant portion of Circular is quoted herein below:

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la'kksf/kr lqfuf'pr o`fRr mUu;u (,e0 ,0 lh0 ih0) ;kstuk 14- ,e0,0lh0ih0 ;kstuk ds rgr~
foRrh; mUu;u gsrq lkekU; izksUufr ekudksa ;Fkk foHkkxh; ijh{kk esa mRrh.kZrk]
mPprj ;ksX;rk dh izkflr vkfn] tks HkrhZ ,oa izksUufr fu;ekoyh esa fufgr gS] dks izklr
djuk vko';d gksxkA vuq'kklukRed@n.MkRed dkjZokbZ ds ekeys esa bl ;kstuk ds
vUrxZr ykHkksa dh Lohd`fr lkekU; izksUufr ds fu;eksa ds v/khu iznku dh tk;sxhA

Hence, the benefit of 3rd ACP/MACP has rightly been denied. 7 6. In view of the aforesaid facts, reasons and judicial pronouncements, the impugned order of recovery of Rs. 6,86,004/- is hereby quashed and set aside and the respondents are directed to make payment of retiral dues adjusting Rs. 60,000/- against fine imposed in departmental proceeding prior to retirement and excess payment of Rs. 6000/- as shown in impugned order dated 20.11.2015 within a period of two months from today.

7. With the aforesaid direction, the writ petition stands allowed. (Pramath Patnaik, J.) Alankar/-

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