

Maya Devi and ors. Vs. Bihar State Electricity Board and ors.

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SooperKanoon Citation : sooperkanoon.com/518379

Court : Jharkhand

Decided On : Jun-02-2003

Reported in : [2003(3)JCR179(Jhr)]

Judge : Tapen Sen, J.

Acts : Service Law; Bihar Pension Rule, 1950 - Rules 43 and 139; [Constitution of India](#) - Article 226

Appeal No. : C.W.J.C. No. 803 of 1998(R)

Appellant : Maya Devi and ors.

Respondent : Bihar State Electricity Board and ors.

Advocate for Def. : Rajesh Shankar, Adv.

Advocate for Pet/Ap. : T.K. Das, Adv.

Disposition : Application allowed

Judgement :

Tapen Sen, J.

1. Heard Mr. T.K. Das and Mr. Rajesh Shankar, learned counsel for the respective parties.

2. The Substitution Application filed on 27.9.2000 is allowed and heirs of Late Jai Narayan Jha who was the original petitioner in the instant case and who died on 13.3.1999 to be treated as petitioners.

3. This writ application is directed against, the order dated 14.12.1994 as contained at Annexure 3 by which the respondent No. 2 refixed the pay of Jay Narayan Jha (original petitioner). The other order dated 1.9.1995 as contained at Annexure 5 is also, under challenge the reason whereof the respondent No. 2 revised the pension and gratuity sectioned to Jay Narayan Jha (original petitioner) on the ground that he had passed the Hindi Noting and Drafting. Examination and also directed that any excess amount drawn by him on account of an earlier order of fixation of pay shall be recovered from the concerned employee, i.e., Jay Narayan Jha.

4. From the facts pleaded in the writ application, it appears that Jay Narayan Jha had been appointed on 14.2.1956 by the Board as a Messenger whereafter he was transferred in the year 1960 and posted as a Tracer in the Transmission Circle at Ranchi, Though being senior most Tracer, he was not given any promotion in the post of Draftsman. Consequently, he filed a representation whereafter, by an order dated 9.12.1980, the respondent No. 2 redesignated him as a Despatch Clerk with retrospective effect vide Annexure 1. He superannuated on 31.1.1993 and 11 (eleven) months thereafter on 6.11.1993 the respondent No. 2 fixed his pension at Rs. 1038/- per month with effect from 1.2.1993 together with Dearness Allowance and admissible reliefs. A sum of Rs. 34,650/- was also allowed towards Gratuity. The order dated 6.11.1993 is Annexure 2 to the writ application. The petitioner received the entire amount of Gratuity and also started receiving pension up to March 1995 whereafter he did not receive any further pension. At paragraph 12 it has been stated that Jay Narayan Jha subsequently came to learn that his pension had been withheld on account of an Office Order dated 14.12.1994 (Impugned Annexure 3) whereby and whereunder his pay had been refixed on the ground that he had not passed the Hindi Noting and Drafting Examination.

5. Being aggrieved, Jha filed representations on 5.10.1995 and 8.7.1996 for purposes of reconsideration, whereafter by Office Order dated 1.9.1995 the second impugned order (Annexure 5) was issued by the respondent No. 2 who revised Annexure 1 (i.e.. the order dated 6.11.1993) and fixed the pension of Jay Narayan Jha at a reduced rate of Rs. 768/- per month together with reduced Dearness Allowance and admissible reliefs and observed/directed that Jha would be entitled to receive a reduced sum of Gratuity, i.e., to the extent of Rs. 28.327.50 and that the excess amount paid to him shall be recovered. Being aggrieved, a representation was again filed on 17.2.1998 but Jha did not receive any consideration at the hands of the respondents and instead, he received a Pension Payment Order showing fixation at the aforementioned reduced rates which also reflected deductions indicated above.

6. The respondents have filed a counter affidavit in the instant case wherein they have stated that the writ petition is not maintainable and that the same should be dismissed on grounds of delay because the same has been filed in the year 1998, whereas the impugned order was passed on 14.11.1994. It has further been stated in the counter affidavit that the earlier grant of Pension and Gratuity vide Office Order dated 6.11.1993 was subject to the condition that if later on it was found that the Pension or Gratuity had been paid in excess then the petitioner (Jay Narayan Jha) would have to refund the excess amounts. In the counter affidavit it has further been stated and submitted that the pay of the petitioner (Jay Narayan Jha) had been reduced on account of the fact that he had not passed the Hindi Noting and Drafting Examination of the Raj Bhasha Department which had been adopted by the Bihar State Electricity Board and therefore, it was only apt to make the aforesaid deductions together with recovery and reduction of pension etc. The stand of the respondents taken in the instant writ application is neither reasonable nor can it be sustained and they are accordingly rejected. There is absolutely no dispute that once a Government Servant retires, his pension and Gratuity and other post retiral benefits have to be fixed in terms of Bihar Pension Rules, 1950. The power to curtail or withhold Pension/Gratuity is to be found only in Rules 43 and Rule 139 of the said Bihar Pension Rules but there is no power either delegated or conferred to curtail, reduce or withhold such post retiral benefits for any reason which is not reflected in the aforementioned rules. No provision has

been made to curtail or reduce or withhold Pension, Gratuity or other retiral benefits for not passing of Hindi Noting and Drafting Examination. Reference in this context may be made to the judgment of this Court in the case of Laxmi Narayan Das v. State of Jharkhand and Ors., reported in 2002 (2) JCR 320. Additionally, there is absolutely nothing on record to show or prove or establish that there was any misrepresentation by Jha at the time of fixation of pension. The other submission to the effect that the writ petition should be dismissed on ground of delay, is also rejected. There is neither any such gross delay in this case nor is there any prescribed straight-jacket formula which makes it obligatory on the part of the Court to dismiss an application under Article 226 of the [Constitution of India](#) for approaching a Court of Enquiry after 4 (four) years. A writ Court being a Court of equity has the power to reject such an objection if equity so demands. This is one of those cases where equity demands that justice should be done and illegality undone.

7. For all the reasons stated above, therefore, this Court is of the opinion that the impugned decision of the Board and/or respondents cannot be said to be either reasonable or fair. Consequently the impugned orders are quashed and the writ application is allowed to succeed. From the pleadings it appears that a major chunk of the pension and/or post retiral benefits of Jay Narayan Jha (original petitioner) has been withheld since April 1995. This Court, therefore, would have proceeded to impose very heavy costs upon the respondents, but considering the fact that the orders had been passed under a misconception of law, this Court refrains from doing so and only directs that the concerned authorities would now forthwith and without any further delay release the entire amounts to the petitioner together with such interest as may be admissible in accordance with law.

The writ application is allowed. No order as to costs.