

The State of Jharkhand and Ors Vs. Namlem Topno and Anr

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Court : Jharkhand

Decided On : Jul-12-2016

Appellant : The State of Jharkhand and Ors

Respondent : Namlem Topno and Anr

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI L. P. A. No. 656 of 2015 with I. A. No. 6142 of 2015 with I. A. No. 6143 of 2015 1. The State of Jharkhand 2. The Principal Secretary, Human Resource Development Department, Govt. of Jharkhand, Project Building, Dhurwa, Ranchi 3. The Director, Secondary Education, Human Resource Development Department, Govt. of Jharkhand, Project Building, Dhurwa, Ranchi 4. The Regional Deputy Director of Education, Kolhan Division, Chaibasa, Mufassil, West Singhbhum 5. The Deputy Commissioner, East Singhbhum at Jamshedpur 6. The District Education Officer, East Singhbhum at Jamshedpur, Bistupur, East Singhbhum ... Appellants Versus 1. Namlem Topno, wife of T. K. Mukherjee, Madhavi Road, Pramoth Nagar, POTata Nagar, PSParsudih, East Singhbhum 2. Miss Marigamayee Banerjee, daughter of S. K. Banerjee, InCharge, S.S. High School, Karandih, Jamshedpur, resident of L.P. School Road, Bengali Para, New Goshala, PO&PSJugsalai, East Singhbhum ... Respondents For the Appellants : Mrs. C. Prabha, S.C. IV : Mr. D. K. Malityar, JC to SCIV For the Respondents : None CORAM: HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR th 05/Dated: 12 July, 2016 Per, Virender Singh, C.J.

Defects as pointed out by the Registry appears to be minor in nature therefore, ignored. 2 I.A No. 6142/2015 2. For the reasons carved out in the application and there being delay of 146 days only in filing the accompanied appeal, we feel no necessity to issue notice to respondents at this stage and being satisfied that the appellant has shown good cause for condoning the delay, we hereby condoned the same. I.A. No. 6142 of 2015 stands allowed. L. P. A. No. 656 of 2015 3. The appellant State of Jharkhand is aggrieved of order dated 23.04.2015 passed in W.P.(S) No. 1647 of 2010 whereby, the learned Writ Court directed release of Rs. 2,40,713/, forthwith and the period between 31.10.2007 to 12.03.2008 to be regularised and consequential service benefits to be extended to the writ petitioner.

4. The controversy involved in the instant case is, whether without resorting to Rule 43(b) of the Jharkhand Pension Rules, 2001, the amount of gratuity payable to the writ petitioner can be withheld ?

5. Rule 43(b) of the Jharkhand Pension Rules, 2001 reads as under : Rule 43 (b). The State Government further reserve to themselves the right of withholding or 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 pensioner is found in departmental or judicial proceeding to 3 have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on reemployment after retirement: Provided that (a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during reemployment; (i) shall not be instituted save with the sanction of the State Government; (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and (iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made; (b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during reemployment, shall have been instituted in accordance with sub clause (ii) of clause(a); and (c)

the Bihar Public Service Commission, shall be consulted before final orders are passed. Explanation. For the purposes of the rule (a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and (b) judicial proceedings shall be deemed to have been instituted: (i) In the case of criminal proceedings, on the date on which a complaint is made or a chargesheet is submitted, to a criminal court; and (ii) In the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil Court.

6. In the case of State of Bihar & Ors. Vs. Mohd. Idris Ansari reported in (1995) Suppl

(3) SCC 56, the Hon'ble Supreme Court has interpreted Rule 43(b) of Bihar Pension Rules (which has been 4 adopted by the State of Jharkhand) in these words :

7. A mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired government servant, it must be shown that in departmental proceedings or judicial proceedings the government servant concerned is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings. It is, therefore, apparent that no departmental proceedings could have been initiated in 1993 against the respondent under Rule 43(a) and (b), in connection with the alleged misconduct as it alleged to have taken place in the year 1986/87. As the alleged misconduct by 1993 was at least six years' old, Rule 43(b) was out of picture. 7. The writ petitioner who was appointed to the post of Assistant Teacher on 01.09.1977, after serving for more than three decades, superannuated on 31.05.2009. When the post retiral benefits were not paid to her, she approached this Court in W.P.(S) No. 1647 of 2010. It appears that during the pendency of the writ petition an amount of Rs. 2,40,713/ was withheld from gratuity payable to her. The appellant herein pleaded before the Writ Court that for the construction of school building an

amount of Rs. 18 lacs was paid to the writ petitioner, who at the relevant time was headmistress of the school. However, only a sum of Rs. 12,23,098/ was spent for construction of new building and the work was entrusted to another junior teacher namely, Nizamuddin Khan who spend sum of Rs. 3,37,263/ only. It was pleaded before the Writ Court that a sum of Rs. 2,40,713/ was thus, found due from the writ petitioner.

8. It appears that vide letters dated 30.10.2010 and 16.11.2010 the writ petitioner was reminded for adjustment of Rs. 2,40,713/ and only after the writ petitioner did not reconcile the amount of Rs. 18 lacs paid to her for construction of school building, the District Education Officer, East Singhbhum, Jamshedpur took a decision to deduct an amount of Rs. 2,40,713/ from the gratuity payable to her. As noticed above, the writ petitioner had already superannuated from service w.e.f. 31.05.2009, and admittedly she has not been found guilty of grave misconduct in a departmental or judicial proceeding. It has also not been pleaded that she has caused pecuniary loss to the Government by misconduct or negligence during her service. It is not in dispute that proceeding under Rule 43(b) of the Jharkhand Pension Rules, 2001 was not initiated against her. 9. There is another aspect of the matter which cannot be left unattended. The Payment of Gratuity Act, 1972 is a special enactment and section 14 provides that the provisions of the Act or any Rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in an enactment or 6 instrument or contract effected through any enactment other than the Payment of Gratuity Act, 1972. Section 4 of the said Act mandates payment of gratuity to an employee on his superannuation or his retirement or resignation provided the employee has rendered continuous service for not less than five years. An exception has been carved out in the case of death or disablement, in which case completion of service of five years is not necessary and the amount of gratuity shall be paid on the death or disablement of the employee. Section 13 provides that the amount of gratuity shall not be subject of attachment in execution of any decree or order of a civil, revenue or criminal court. The relevant extracts of Sections 4, 13 and 14 of the Payment of Gratuity Act, 1972 are reproduced below :

4. Payment of gratuity. (6) Notwithstanding anything contained in subsection (1), (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused; (b) the gratuity payable to an employee [may be wholly or partially forfeited] (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. 13. Protection of gratuity - No gratuity payable under this Act [and no gratuity payable to an 7 employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section 5] shall be liable to attachment in execution of any decree or order of an civil, revenue or criminal court. 14. Act to override other enactments, etc. The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act. 10. A perusal of the aforesaid provisions under the Payment of Gratuity Act, 1972 makes it abundantly clear that only when conditions under subsection 6 to Section 4 are satisfied, gratuity of an employee can be fortified wholly or partially. None of the conditions enumerated therein is satisfied in the present case. Infact, the writ petitioner was not terminated from service. 11. In view of the aforesaid provisions under the Payment of Gratuity Act, 1972 deduction of Rs. 2,40,713/ from the amount of gratuity payable to the writ petitioner for adjusting the amount allegedly due from her cannot be sanctioned in law. Withholding of Rs. 2,40,713/ from the gratuity of the writ petitioner was wholly illegal and without jurisdiction. In the memorandum of appeal no other plea except challenging the direction of the Writ Court to pay Rs. 2,40,713 to the writ petitioner, has been pleaded. The learned Writ Court has rightly ordered payment of the said amount to the writ petitioner, forthwith. 12. Considering the aforesaid facts, we find no merits in the 8 instant appeal and accordingly, it is dismissed. 13. I.A. No. 6143 of 2015 also stands dismissed. (Virender Singh, C.J.) (Shree Chandrashekhar, J.) Tanuj/

