

Masomat Sobarni Devi Vs. Bihar State Food and Civil

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Court : Jharkhand

Decided On : Aug-04-2016

Appellant : Masomat Sobarni Devi

Respondent : Bihar State Food and Civil

Advocate for Def. : Mr. Ramit Satyendar

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI L.P.A No. 456 of 2008 ----
Masomat Sobarni Devi widow of late Sukra Oraon, presently residing at Misir Gonda, Piwar Toli, Kanke Road, PO Ranchi University PS Gonda District Ranchi Appellant Versus 1.The Bihar State Food & Civil Supplies Corporation Ltd., PO & PS Punaichak, Patna 23 (Bihar) 2.The Managing Director, Bihar State Food & Civil Supplies Corporation Ltd., Punaichak, PO & PS Punaichak, Patna 23 (Bihar) 3.The District Manager, Bihar State Food & Civil Supplies Corporation Ltd., PO & PS Kadma Bazar, Jamshedpur, Jharkhand Respondents Coram: Honble Mr. Justice Virender Singh, Chief Justice Hon'ble Mr. Justice Shree Chandrashekhar For the Petitioners/Appellant : Mr.Atunu Banerjee, Advocate For the RespondentState : Mr.Ramit Satyendar, Advocate th Dated : 4 August, 2016 Per ShreeChandrashekhar,J. : Umpteen times it has been held by Hon'ble Supreme Court that pensionary benefits of an employee cannot be withheld by a mere executive order, still, the growing number of cases filed in the Courts complaining illegal withholding or forfeiture of pension and pensionary benefits only points out to the impunity with which the executives have tried to deprive a person of his

rightful which was lawfully due to him at the sunset of his career. The issue, whether pension is a reward for the past services or a bounty to a government servant was authoritatively decided in *Deokinandan Prasad Vs. State of Bihar* reported in (1971) 2 SCC330 that right of a government servant to receive pension is property under Article 31(1) and by a mere executive order the State cannot withhold the same, seems to have been forgotten while proposing deduction of Rs.12,05,242/- vide memo dated 11th August, 2005 from the death-cum- retiral dues of the deceased husband of the appellant-writ petitioner (hereinafter referred to as petitioner). This brought the petitioner before the Writ Court, which disposed of the writ petition by directing respondent-Corporation Bihar State Food & Civil Supplies Corporation Ltd. to pay the payable amounts under E.P.F, Group Insurance and other retiral benefits which would remain payable after making recovery of proposed amount of loss.

2. Briefly stated, the undisputed facts of the case are summarized hereunder:- (i) The husband of the petitioner was appointed to the post of Lower Division Clerk on 17.01.1974. After more than 28 years of service, a First Information Report dated 5th December, 2002 under section 409, 420, 465 and 467 I.P.C was registered against the husband of the petitioner on the allegation of misappropriation of Rs.12,05,242/-. A departmental proceeding was initiated against the husband of the petitioner, in which he did not appear, nor did he submit his reply to the show cause notice. In the meantime, notice dated 12th July, 2003 intimating the date of superannuation from service with effect from 31st July, 2003 was issued to him. The Chairman-cum-Managing Director, Bihar State Food & Civil Supplies Corporation Ltd., passed the punishment order dated 9 th January, 2004, whereunder the following punishments were imposed upon the husband of the petitioner:- (a) He shall not be entitled to any payment except subsistence allowance during the period of suspension; (b) the amount of Rs.12,05,242/- with simple interest @ 18% to be adjusted from 3 arrears of salary/allowances and gratuity payable to him and for recovery of the balance amount, criminal and civil cases to be instituted. (ii) The husband of the petitioner died on 2nd July, 2005 and the petitioner made representations dated 13th July, 2005 and 8th August, 2005 for payment of pension and other pensionary benefits, to which the respondent-District Manager, Bihar State Food & Civil Supplies Corporation Ltd.

vide its letter dated 11th August, 2005 informed the petitioner about the punishment imposed upon her husband in the departmental proceeding. Constrained, petitioner approached the Writ Court in W.P (S) No. 1700/2006, which was disposed of in the aforesaid terms, noticed hereinabove.

3. On the basis of the pleadings of the parties and rival contentions, the following issue arises for consideration:- Whether, after the death of the deceased employee, recovery in terms of punishment order dated 9th January, 2004 can be made from the pension and other retiral dues to the deceased employee?

4. Heard.

5. The departmental proceeding against the deceased employee was conducted ex parte, and before the punishment order dated 9 th January, 2004 was passed, the employee had superannuated from service with effect from 31st July, 2003. Referring to the postal receipts, vide Annexures - 11 series, Mr.Atanu Banerjee, learned counsel for the petitioner submits that communications sent to the deceased employee were not delivered and consequently, he could not participate in the departmental proceeding, nor could he challenge the punishment order dated 9th January, 2004. The 4 materials brought before the Writ Court by the respondents do not disclose that except, issuing show cause notice to the husband of the petitioner, which were not served upon him, further enquiry was conducted into the charges framed against him, vide charge memo dated 17 th February, 2003. It is an admitted position that the enquiry report, if any, was not served upon the employee, nor a copy of the report was produced in the writ proceeding. Before the Writ Court, the respondents relied on the alleged letter dated 1st June, 2005 sent by the husband of the petitioner to the Bihar State Food & Civil Supplies Corporation Ltd., for release of the post retiral benefits after adjusting the misappropriated amount.

6. Mr. Ramit Satyendar, learned counsel for the respondents, however, tried to support the impugned communication dated 11 th August, 2005 and order dated 20th November, 2008 passed in W.P (S) No. 1700/2006, contending that so long as the punishment order dated 9th January, 2004 remains operative, the Department can legally recover the said amount from the post-retiral benefits due

to the deceased employee. Learned counsel relied on Rule 26 III A of the Service Conduct & Disciplinary Rules applicable to the employees of the Bihar State Food & Civil Supplies Corporation Ltd., which was issued vide office order dated 9th January, 2004.

7. In so far as, applicability of Rule 26 III A of the Service Conduct & Disciplinary Rules to the proceedings initiated against the husband of the petitioner is concerned, it can be held with certainty that it was not applicable as on the date when the punishment order dated 9th January, 2004 was passed against him. The office order dated 9th January, 2004, whereby Rule 26 III A incorporated in the Service 5 Conduct & Disciplinary Rules was notified, discloses that as on that date, it was not approved by the Board of Directors. Memo no.4/01-252/Patna dated 9th January, 2004 reads, copy forwarded to I/C Company Secretary, Bihar State Food & Civil Supplies Corporation Ltd., HO Patna, for information and for placing it before the Board of Directors in its next subsequent meeting. The draft Rule 26 III A also discloses that retiral benefits except, E.P.F and Group Insurance amount only can be forfeited for recovery of the losses caused to the Corporation, if the employee is found in a departmental or judicial proceeding guilty of gross misconduct or to have caused losses to the Corporation by misconduct or negligence, during his service including service rendered on re-employment after retirement.

8. The Writ Court has erroneously held Rule 26 IIIA applicable to the deceased employee, when it records a finding that the action of the respondents to recover penal losses from the retiral dues of the delinquent employee by virtue of the authority vested in it is justified.

9. Another mistake committed by the Writ Court is reflected in its finding in reference to letter dated 01-06-2005 written by the deceased employee to the effect that, by his conduct, he had acquiescenced and had acknowledged his liability to make good the pecuniary loss caused to the respondent-corporation and had given his consent in writing, allowing the concerned authorities of the respondents to deduct the amount of pecuniary loss caused to the corporation, from his retiral dues.

10. The husband of the petitioner was not dismissed from service rather, he superannuated from service on 31-07-2003. Non-obstante clause in sub-section (6) to section 4 of the Payment of Gratuity Act, 1972 is, thus, not attracted in his case. The amount of gratuity payable to the employee cannot be held or forfeited, wholly or in part, on the basis of such uncorroborated letter as the one written by the employee. Section 14 of the Payment of Gratuity Act, 1972 makes the position abundantly clear. The Disciplinary Rules applicable to the employees of the Corporation do not provide for forfeiture/deduction/adjustment from the Gratuity, E.P.F and Group Insurance due to an employee. Even Rule 26 III A specifically prohibits recovery from E.P.F and Group Insurance amount. Family pension to which the petitioner, being widow of the employee, may be entitled for was not the property of her husband, from which the amount of loss can be recovered.

11. The final blow dealt to the petitioner is contained in the direction issued to the respondent-Corporation by the Writ Court. The error committed by the Writ Court becomes apparent when one notices that after recording correct proposition of law in respect of withholding of retiral benefits, the Writ Court permitted the respondent-Corporation to make payment after making recovery of the proposed amount of loss. The direction of the writ court is as follows:-

8. However, the powers to withhold the post retiral benefits do not extend to EPF, Group Insurance and Pension payable to the employee. The respondents are under legal obligation to release payments towards EPF and Group Insurance and to release the retiral benefits after making the proposed recovery towards the amount of loss sustained by the Corporation. Accordingly, I direct the respondent Corporation to pay the payable amounts under the EPF, Group Insurance and retiral benefits which would remain payable after making recovery of proposed amount of loss. The respondents shall also process the necessary papers for fixing the pension payable in the account of the deceased employee after obtaining all the relevant documents from the petitioner, so as to enable the petitioner to receive the amount. This exercise must be carried out by the respondents within a period of four months from the date of receipt/production of a copy of this order.

12. The petitioner, being widow of the deceased employee who 7 superannuated from service of the respondent-Corporation, by virtue of her position, became entitled to receive pension, family pension (if applicable) and other retiral benefits due to her husband. The Writ Court erroneously relied on letter dated 01.06.2005 allegedly written by the deceased employee and Rule 26 III A which was not applicable in case of the husband of the petitioner.

13. In view of the aforesaid discussions, we find that the impugned order dated 20.11.2008 passed by the Writ Court suffers from serious infirmity in law, and consequently, it is set-aside. The instant Letters Patent Appeal stands allowed. Once the appellant completes the formalities, the respondent-Corporation shall make payment within four weeks, thereafter. (Virender Singh, C.J.) (Shree Chandrashekhar,J.) Jharkhand High Court, Ranchi The 4th August, 2016 AFR/dey

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