

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 420 of 2020

Radhey Shyam Pandey Petitioner

Versus

1. State of Jharkhand.
2. The Additional Chief Secretary,
Water Resources Department, Ranchi.
3. The Joint Secretary,
Water Resources Department, Ranchi Respondents

CORAM : HON'BLE MR. JUSTICE DR. S.N. PATHAK

(Through Video Conferencing)

For the Petitioner : Mr. Shadab Bin Haque, Advocate
 For the Respondents : Mr. Ashish Kumar Thakur, AC to AAG-II

10/ 08.09.2021 Heard the parties.

2. The petitioner has approached this Court for quashing the reasoned order, in particular paragraph-12 thereof, passed by respondent No.3 issued vide Memo No. 6262 dated 13.11.2019 (Annexure-7) in compliance of the order of this Court dated 25.8.2018 passed in W.P.(S) No. 1985 of 2018, whereby the respondents have denied payment of interest on the amount of delayed payment admissible to him, simply on the ground that dismissal of the petitioner has been quashed by this Court on technical ground and not on merit and he has not been exonerated from the charges and further the petitioner has also been denied payment of house rent allowance as admissible for Ranchi town for the period 5.5.2000 to 5.7.2006.

3. As per the factual matrix, the petitioner was appointed as Assistant Engineer in Water Resources Department on 17.9.1973. During the service period in the year 2020, the petitioner was put under suspension and his headquarter was fixed in the office of Chief Engineer, Water Resource Department, Ranchi. Two departmental proceedings were initiated against the petitioner and he was dismissed from service with effect from 29.3.2003 and subsequently with retrospective effect from 29.3.2003. Aggrieved by the same, the petitioner challenged the both orders of

dismissal by filing W.P.(S) No. 2138 of 2003 and W.P.(S) No. 6309 of 2004 and both the cases were heard together and both the writ petitions were allowed by order dated 25.8.2005 and the orders of dismissal were quashed, with liberty to the respondents to proceed against the petitioner, if it is so warranted in the circumstance of the case. The State preferred L.P.A. No. 4 of 2006, which also stood dismissed on 18.4.2006. After quashment of the appeal preferred by the State, the petitioner was reinstated in service with effect from 6.7.2006 and accordingly joined the service. After serving the Department of another six years, the petitioner was superannuated on 30.11.2012. Pursuant to the liberty granted by this Court, a final order was passed by the respondent-authorities vide Memo No. 2086 dated 7.3.2014, wherein the petitioner was exonerated from all the charges. Thereafter the petitioner was granted the benefits of 1st and 2nd ACP on 29.3.2017 by notification No. 1648 with effect from 9.8.1999 and monetary benefits were also paid on 14.3.2018, as well as arrears of salary, but the petitioner was denied interest on the delayed payment.

4. Thereafter the petitioner compelled to move this Court in W.P.(S) No. 1985 of 2018 for payment of penal interest @ 2% per annum and house rent allowance. The said writ petition was disposed of vide order dated 25.8.2018 with a direction to the respondents to file a fresh representation. When no order passed on the representation filed by the petitioner, a contempt application, being Cont. Case (Civil) No. 1001 of 2019 was also filed. During the pendency of this contempt application, the reasoned order was passed on 13.11.2019 rejecting the claim of the petitioner. The petitioner has challenged the said reasoned order in the instant writ petition.

5. Mr. Shadab Bin Haque, learned counsel appearing for the petitioner assiduously submits that the respondents during the pendency of the writ petition have paid the entire benefits including the arrears of salary. Learned counsel further argues that as per the Rule 97(1)(2) of the Jharkhand Service Code, the entire benefits, which were entitled to, have also been extended to the petitioner. It was further argued that the petitioner is aggrieved by non-payment of house rent allowance and also the interest

on delayed payment. Learned counsel demonstrates to this Court that retiral benefits such as pension was paid on 27.12.2017, arrears of gratuity was paid on 27.12.2017 and leave encashment was paid on 18.8.2017, though the petitioner retired on 30.11.2012 itself and as such, the petitioner has suffered a huge loss of interest for about five years and more. Learned counsel submits that the petitioner is entitled for house rent allowance, as he was posted in the headquarters at Ranchi and any payment in the head of house rent allowance ought to have been considered and paid taking into consideration of his posting at Ranchi and not at Deoghar. Learned counsel further argues that the impugned reasoned order is not tenable in the eyes of law, as the respondent authorities have not taken into consideration that the order of dismissal has been quashed and the State lost both in LPA as well as in Civil Review and accepting this fact, they have also released the entire amounts due. Learned counsel humbly submits that a direction be given to the respondents to pay the interest on the delayed payment as also the amount of house rent allowance in accordance with law.

6. Mr. Ashish Kumar Thakur, learned AC to AAG-III vehemently opposes the contention of learned counsel for the petitioner. Learned counsel submits that the impugned reasoned order is fully justified and there is no illegality or infirmity in the impugned order. Learned counsel further argues that as per the entitlement of the petitioner under Rule 97 (1)(2) of the Jharkhand Service Code, he has been paid the benefits. The petitioner is not entitled for any interest on the payment and as far as house rent allowance is concerned, in view of the said Rule, he was not entitled for house rent allowance in view of his earlier posting before the order of suspension or dismissal. Justifying the impugned order and relying upon the statements made in the counter affidavit, learned counsel submits that there is no deliberate and intentional delay on the part of respondents and as such, the writ petition is devoid of any merit and fit to be quashed and set aside.

7. Be that as it may, having heard the rival submissions of the parties across the Bar, this Court is of the considered view that the case of the petitioner needs consideration. Admittedly the orders of dismissal have been quashed and set aside by this Court. Challenge thrown to the said

order has been turned out in letters patent appeal as well as in civil review. Being conscious of the fact that the State was bound to pay the benefits after quashment of the order and after loosing in appeal and review, the State has paid the entire benefits. So far as the claim of statutory interest accrued upon arrears of pensionary benefits is concerned, this Court is of the considered view that due to callous approach of the respondent State, the petitioner has been subjected to hardship and has suffered monetary loss which makes respondents liable to pay interest on the due amount at an appropriate rate to compensate the petitioner.

8. The said issue has already been set at rest by the Hon'ble Apex Court in its recent judgment delivered on **08.02.2021** in case of State of ***Andhra Pradesh & Anr. vs. Dinavahi Lakshmi Kameswari*** [Civil Appeal No. 399 of 2021 (arising out of SLP(C) No. 12553/2020)], wherein it is held that salaries and pensions are "rightful entitlements" of government employees and in case of delay, they should be paid with interest at an appropriate rate. The relevant paragraphs of said judgment is reproduced herein below:

“14. The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State. The State Government has complied with the directions of this Court for the payment of the outstanding dues in two tranches. Insofar as the interest is concerned, we are of the view that the rate of 12% per annum which has been fixed by the High Court should be suitably scaled down. While learned counsel for the respondents submits that the award of interest was on account of the action of the Government which was contrary to law, we are of the view that the payment of interest cannot be used as a means to penalize the State Government. There can be no gainsaying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate. 15. We accordingly order and direct

that in substitution of the interest rate of 12% per annum which has been awarded by the High Court, the Government of Andhra Pradesh shall pay simple interest computed at the rate of 6% per annum on account of deferred salaries and pensions within a period of thirty days from today.”

9. So far as payment of house rent allowance is concerned, admittedly the petitioner was posted as per the order of the respondent authorities fixing the headquarter at Ranchi from 5.5.2000 to 5.7.2006. Therefore, the petitioner is entitled for house rent benefit which accrued to him during his posting at Ranchi i.e. from 5.5.2000 to 5.7.2006 at the rate admissible for Ranchi town.

10. As a sequel to the aforesaid observations, rules, guidelines, legal propositions and judicial pronouncements, I hereby direct the respondent-State to pay the rest of the amounts which have not been paid to the petitioner and the differences of amounts carrying interest at the rate of 6% per annum from the date it fallen due till the date of its actually payment within a period of three months from the date of receipt/production of a copy of this order.

11. With the aforesaid observations and directions, the writ petition stands allowed. No order as to cost.

(Dr. S. N. Pathak, J.)