

SUPREME COURT JUDGEMENT DATED 14.08.2013 (CIVIL APPEAL NO. 6770 OF 2013)

IN THE MATTER OF STATE OF JHARKHAND AND ORS VS JITENDRA KUMAR SRIVASTAV AND ANR.

**HELD: Pension withholding on the basis of administrative order in deviation of Pension Rules – Bad in Law.**

**Brief Facts:**

Shri Jitendra Kumar Srivastava (Respondent) joined the service in Animal Husbandry Department of Govt. of Bihar on 02.11.1966. Two cases were registered against him on 16.04.1996, under various sections of IPC and Prevention of Corruption Act, alleging serious financial irregularities, during the year 1990-91, 1991-92. In the year 2000; he was posted in Ranchi as an Officer in the said Deptt. and on promulgation of Bihar Reorganization Act 2000, he became the employee of State of Jharkhand. On 30.01.2002, State Govt. ordered departmental enquiry against him, and he was suspended from the service. Respondent Sh. Srivastav retired from the service on 31.08.2002, on superannuation. The criminal cases filed against him were still pending.

After retirement on 31.08.2002, the Appellant State Govt released on 25.05.2003 the GPF and 90% pension to Respondent Shri Srivastav. The State Govt. withheld salary of eight months from 01.01.2002 to 31.08.2002, (i.e. for the suspension period) and 10% pension.

Shri Jitendra Kumar Srivastava, aggrieved by this action, filed Writ Petition before High Court of Jharkhand. Hon'ble High Court remanded back the matter to the Govt. with direction that payment of pension, gratuity and other dues should be considered in the light of Govt's order Resolution No. 3014 dated 31.07.1980. The State Govt. rejected representation of the Respondent on 16.03.2006. The Respondent filed another Writ Petition in the High Court challenging the rejection of representation. The said Writ was also dismissed by the single judge. Respondent filed the Writ Appeal in the same High Court before the Hon'ble Division Bench. The Hon'ble Division Bench allowed the Writ Petition of the Respondent and ordered for release of the pension vide Order dated 28.08.2007.

The State Govt. being unhappy with the order dated 28.08.2007 filed the SLP which was converted into Civil Appeal No. 6770 of 2013 before the Hon'ble Supreme Court of India. Hon'ble Supreme Court dismissed the State Govt.'s Appeal with cost of Rs. 10,000.00 vide order dated 14.08.2013.

**Main Issue Decided:**

1. Was the State Govt. within its authority to withhold the pension on the basis of administrative order? Reply – NO
2. Can the PF, Gratuity and Pension be ordered to be withheld without valid and enforceable provision of law? Reply – NO
3. Rule 43 (b) of Bihar Pension Rules which are applicable in Jharkhand also, confers power on the State Government to withhold or withdraw a pension or part thereof under certain circumstances.

Hon'ble Supreme Court agreed with the finding of the Jharkhand High Court and confirmed that "Reading of Rule 43(b) (of Bihar Pension Rules) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension etc.

**ONLY when a finding is recorded** either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. **There is**

**no provision in the rules for withholding of the pension/ gratuity when such departmental proceedings or judicial proceedings are still pending.”**

In present matter the departmental enquiry as well as the judicial proceedings were not concluded.

Hon'ble Supreme Court quoted various other pronouncements made by the Court earlier and most importantly held that other than the Rules framed under law, no other administrative order of the employer can withhold the pension, gratuity and PF. In last para 15 of the Judgment, Hon'ble Supreme Court concluded as under:

***“It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold - even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.”***

**IMPACT OF THIS JUDGEMENT:**

1. The employees / officers whose pension, gratuity , PF have been ordered to be withheld by Administrative Circular or Order, pending departmental enquiries or judicial proceedings, the same are unlawful. The employees' pension cannot be withheld , if there is no enabling Rule or Provision in the Pension Rules.
2. Public Sector Bank's (Employees') Pension Regulations 1995 Chapter IX ( General Conditions) Regulation Nos. 42 to 45 deal with withholding or withdrawal of pension. These regulations are similar to the Regulations of State Govt. as have been discussed in the Judgment. The withholding or withdrawal of pension is permitted under these Regulations ONLY when enquiry or proceedings are concluded and this is recorded that employee had committed grave misconduct in the discharge of his duty while in his office.
3. The benefit of this Judgment will certainly be available to the hundreds of the retired employees, whose pension has been withheld or withdrawn without completion of departmental enquiry or judicial proceeding. The judgements of the Hon'ble Supreme Court deciding any policy issue become and take the form of law. The Government is duty bound to comply with the directions of the Hon'ble Supreme Court if not suo- moto, on representation made by the concerned persons. The Representation to the all Govt. of India undertakings and departments may be made to ensure compliance of the guidelines given in this judgement dated 14.08.2013.

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