

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P.(S) No. 3987 of 2021**

Shanti Devi

.... .... Petitioner

Versus

1. The State of Jharkhand through the Principal Secretary, Department of Higher Technical Education and Skill Development, [REDACTED]
2. The Director, Higher Education, Government of Jharkhand, [REDACTED]
3. The Deputy Secretary, Department of Higher Technical Education and Skill Development, [REDACTED]
4. Ranchi University through the Registrar, Ranchi University, [REDACTED]
5. The Vice Chancellor, Ranchi University, [REDACTED]

.... .... Respondents

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

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For the Petitioner : Mrs. Ritu Kumar, Advocate  
Mr. Samavesh Bhanj Deo, Advocate  
Mrs. Shatakshi, Advocate  
For the Resp.-State : Mr. Rahul Saboo, GP-II  
Mr. Rishab Kaushal, AC to GP-II  
For the Resp.-University : Ms. Aprajita Bharadwaj, Advocate  
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19/16.05.2024 Heard learned counsels for the parties.

2. The instant writ petition has been filed for issuance of mandamus and commanding the respondents to immediately and forthwith release the pension, gratuity, group insurance and leave encashment to the petitioner.
3. The brief facts of the case are that the petitioner was appointed on 01.11.1984 vide Letter No. 82/84 on the post of Lecturer in BNJ College, Sisai, Gumla. Thereafter, the petitioner was put on deputation and further transferred to Ram Lakhani Singh Yadav College, Kokar, Ranchi, on 16.02.2002. Further, the petitioner was appointed as a member of Jharkhand Public Service Commission vide Notification No. 6/L.S.A.-6127 dated 07.11.2003, where she took charge vide Memo No. 804. The petitioner remained in extraordinary leave without pay for 5 years and was on lien for 6 years. Thereafter, upon being relieved from Jharkhand Public Service Commission, the petitioner joined Ram Lakhani Singh Yadav College, Kokar, Ranchi,

on 07.11.2009. It is specific case of the petitioner that 6 cases were lodged against her out of which in 3 cases she has been acquitted and other 3 cases are pending before this Court and in one of the cases, the petitioner has been released on bail. The petitioner remained in judicial custody and was suspended from her services vide Memo No. RU/16/0136/11 dated 03.06.2011. Subsequently, the petitioner was released from judicial custody and by the order of the Vice Chancellor, her suspension was revoked vide Memo No.B/316/14 dated 14.03.2014 with effect from 30.01.2014 and no departmental proceeding was ever initiated against the petitioner. The petitioner performed her duty from 30.01.2014 to 03.03.2015 at Ram Lakhan Singh Yadav College, Kokar, Ranchi, and thereafter, on 04.03.2015, vide Memo No. RU/R/4464/15, the petitioner was again suspended and was asked to report at the headquarters of Ranchi University during the suspension period, where the petitioner reported on 10.03.2015. Thereafter, again the suspension of the petitioner was revoked on 17.01.2019 vide Memo No. B/31/19. During the suspension period from 04.03.2015 to 17.12.2018, the petitioner was paid suspension allowance for 1 year and thereafter 75 per cent suspension allowance. Thereafter, by the order of the Vice Chancellor, Ranchi University, the petitioner was made to retire under provision of Section 67 of the Jharkhand State Universities Act, 2000, vide Memo No. B/47/19 dated 25.01.2019, in lieu of 3 months salary. Thereafter, the petitioner made several representations for payment of gratuity, pension, leave encashment and group insurance but no heed was paid and nothing has been paid till date on ground of pendency of the criminal cases.

4. Mrs. Ritu Kumar, learned counsel appearing for the petitioner, vociferously argues that merely pendency of the criminal cases cannot be a ground for withholding the pensionary benefits including gratuity, leave encashment and group insurance of the petitioner. Further, it has been argued that never any departmental proceeding was initiated against the petitioner and she was made to retire in the year 2019. In the criminal cases, the petitioner has never been

convicted and merely on the ground of pendency of the vigilance cases, the pensionary benefits of the petitioner cannot be withheld. Placing heavy reliance on the celebrated judgment of Hon'ble Apex Court in the case of *State of Jharkhand and Others versus Jitendra Kumar Srivastava and Another* reported in (2013) 12 SCC 210, it has been argued that pendency of the criminal cases cannot be a ground for withholding the pension, gratuity, leave encashment and group insurance of the employee.

5. On the other hand, Ms. Aprajita Bharadwaj, learned counsel representing the respondent-Ranchi University, opposing the contentions of Mrs. Ritu Kumar, emphatically argues that the petitioner is not entitled for other benefits as several criminal cases are pending against her. Learned counsel argues that earlier the petitioner was arrested by the vigilance department and was sent to jail on 02.06.2011. Thereafter, the Vice Chancellor of the Ranchi University was pleased to suspend the petitioner and she remained under suspension with effect from 02.06.2011. Thereafter, the petitioner was released on bail and subsequently her suspension order was revoked on 14.03.2014. Learned counsel submits that due to pendency of serious criminal charges against the petitioner involving moral turpitude, the petitioner was again put under suspension on 04.03.2015 with immediate effect and again the same was revoked on 17.01.2019. Thereafter, in the public interest, the syndicate of the Ranchi University vide Resolution No. 1038/18 dated 18.12.2018 took the decision to give compulsory retirement to the petitioner and subsequently, vide order of the Vice Chancellor dated 25.01.2019 contained in Memo No. B/47/2019, the petitioner was made to retire under provisions of Section 67 of the Jharkhand State University Act, 2000. Thereafter the process for settlement of the retiral benefits of the petitioner was undertaken and she has already been paid Rs.5,00,000/- in the head of provident fund, which was duly received by the petitioner. The petitioner made representation on 16.01.2021 before the Registrar of the University for releasing her pension along with arrears the same, which was under process, but the petitioner has

hurriedly filed this writ petition without waiting for the outcome of the same.

6. Learned counsel for the respondent-State submits that the State releases the amount as and when recommendation/requisition is received from the University for making payment after fixation of pay.
7. Heard the parties at length and perused the documents brought on record and specific averments made in the writ application as well as the counter-affidavits. It is an admitted fact that petitioner served the University as a lecturer and thereafter was posted as a Member of the Jharkhand Public Service Commission. Subsequently, six criminal cases were lodged against the petitioner by the Vigilance Department, in which in three cases she has been acquitted and the other three criminal cases are still pending, but the petitioner has never been convicted. After being released from the Commission, the petitioner was put under suspension and the same also stood revoked. Never any departmental proceeding was initiated against the petitioner. The legal issue to be decided in the instant writ petition is whether pendency of the criminal case can be a bar for non-payment of retiral benefits, including gratuity, pension, group insurance and leave encashment.
8. The issue fell for consideration before this Court in the case of *Dr. Dudh Nath Pandey versus State of Jharkhand and Others* reported in *2007 (4) JCR 1*. In the said case, the Hon'ble Full Bench, vide judgment 28.08.2007, decided the two issues which fell for consideration, which can be summed up as follows:-
  - “(i) Under Rule 43(a) and 43(b) of the Bihar Pension Rules, there is no power for the Government to withhold gratuity and pension during the pendency of the departmental proceeding or criminal proceeding. It does not give any power to withhold leave encashment at any stage either prior to the proceeding or after conclusion of the proceeding.
  - (ii) The circular, issued by the Finance Department, referring to the withholding of the leave encashment would not apply to the present facts of the case as it has no sanctity of law.”

9. Further, it is an accepted position that gratuity and pension are not the bounties, since an employee earns these benefits by dint of his long, continuous, faithfully and unblemished service.

10. The Hon'ble Apex Court in the case of *D.S. Nakara and Others versus Union of India* reported in (1983) 1 SCC 305 has lucidly described as under:-

“The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for erstwhile employee even after the contract of his employment has come to an end and the employee has ceased to rendered service?

What is pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.”

11. The Hon'ble Apex Court in the case of *Deokinandan Prasad versus State of Bihar* reported in (1971) 2 SCC 330 has held as under:-

“31. .... pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.”

12. In the case of *Poonamal versus Union of India* reported in (1985) 3 SCC 345 the Hon'ble Supreme Court has held as under:-

“7. .... pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right.”

13. In the case of *U.P. Raghavendra Acharya versus State of Karnataka* reported in (2006) 9 SCC 630 the Hon'ble Apex Court has held as under:-

“25. Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is correlated and has a nexus with the salary payable to the employees as on the date of retirement.”

14. The same view was reiterated in case of *Jitendra Kumar Srivastava* (supra) wherein the Hon'ble Apex Court has held that in absence of any specific rules, pension being as a right in “property”, cannot be withheld and the same is impermissible. It was observed that a person cannot be deprived of pension without the authority of law, which is a constitutional mandate enshrined in Article 300A of the Constitution of India. It follows that attempts of the State Government to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.
15. As a sequitur to the aforesaid rules, guidelines and judicial pronouncement, this Court takes no other view as what has been taken by the Hon'ble Apex Court in the aforesaid judgments and ratio laid down resultantly therein.
16. Accordingly, the respondents are directed to fix the pension of the petitioner taking into consideration the 6th and 7th pay revision and thereafter fixing the benefits and pay the amount of gratuity, leave encashment and other benefits for which the petitioner is entitled for, in accordance with law, within a period of 12 weeks from the date of receipt/production of a copy this order.
17. With the aforesaid directions and observations, this writ petition stands allowed.

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