

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 482 of 2024

Ranchi University through its Registrar, Binod Narayan, aged about 59 years, Son of Late Deonandan Prasad, Resident of Devi Mandap Road, Near SBI Officer's Colony, P.O. Hehal, P.S. Sukhdeo Nagar & District-Ranchi having its Office at University Campus, P.O. G.P.O. & P.S. Kotwali, District-Ranchi ... Appellant

Versus

1. Shanti Devi, aged about 68 years, w/o Late Mahendra Ram, resident of village-Lowadih, P.O. Namkum, P.S. Namkum, District-Ranchi at present resident of Magistrate Colony, Near Survey of India Gate, P.O Doranda, P.S. Doranda, District Ranchi
2. The State of Jharkhand through the Principal Secretary, Department of Higher, Technical Education and Skill Development, having its Officer at Nepal House, P.O. & P.S. Doranda, District-Ranchi.
3. The Director, Higher Education, Government of Jharkhand, having its Office at Nepal House, P.O. & P.S. Doranda, District-Ranchi.
4. The Deputy Secretary, Department of Higher Technical Education and Skill Development, having its Office at Nepal House. P.O. & P.S. Doranda District-Ranchi.
5. The Vice-Chancellor, Ranchi University Ranchi having its Office at University Campus, P.O. G.P.O. & P.S. Kotwali, District-Ranchi.

... Respondents

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR**

For the Appellant : Ms. Aprajita Bhardwaj, Advocate
For Resp. No.1 : Mr. Indrajit Sinha, Advocate
Ms. Prerna Jhunhunwala, Advocate
For the State : Md. Z.A. Khan, A.C. to S.C.-VII

C.A.V. On: 20.08.2025 Pronounced On: 25.08.2025
Per Tarlok Singh Chauhan, C.J.

1. Heard the parties.
2. Aggrieved by the judgment passed by the learned writ Court, the appellant has filed the instant Letters Patent Appeal.
3. The brief facts of the case are that the respondent No. 1 was appointed as a lecturer in Hindi subject in B.N.J. College, Sisai, Gumla on 01.11.1984 for a period of one year temporarily and it was stated in the appointment letter that her services could be terminated any time without giving reasons during this period. Pursuant to the

appointment letter, the respondent No. 1 joined the college on 07.01.1985.

4. On 08.02.2002, the respondent No. 1 was transferred to Ram Lakhan Singh Yadav College, (hereinafter to be referred as 'R.L.S.Y.' College) Kokar, Ranchi initially on deputation, whereby in addition to teaching, she was also required to perform duties at Tabulation Centre for which she was not to be granted duty leave. The respondent No. 1 joined the said college on 16.02.2002.

5. Thereafter, the respondent No. 1 on 07.11.2003 was appointed as a member of the Jharkhand Public Service Commission and took charge on the same date.

6. Respondent No. 1 was granted extraordinary leave without pay for 5 years vide Memo dated 28.02.2004.

7. Vide Memo dated 03.03.2005, respondent No. 1 was provisionally absorbed in the service of Ranchi University under Section 4 (14) of the Jharkhand State Universities Act, 2000.

8. On 06.04.2009, while the respondent No. 1 was on deputation in 'R.L.S.Y. College, she was granted leave with lien (without pay) from 08.11.2008 to 07.11.2009, pursuant to meeting held by the Ranchi University dated 23.12.2008.

9. Subsequently, respondent No. 1 again joined back at the 'R.L.S.Y.' College on 07.11.2009 after being relieved by the Jharkhand Public Service Commission.

10. Thereafter vide Memo dated 12.03.2010 the respondent No. 1 was transferred to 'R.L.S.Y.' College, Kokar, Ranchi instead of deputation with effect from 07.11.2009.

11. On 02.06.2011, respondent No. 1 was arrested by the Vigilance Department and sent to jail.

12. Thereafter on 03.06.2011, respondent No. 1 was suspended from her service.

13. On 22.05.2015, the appellant-University requested for fixation of pay and revision of pay in accordance with 6th Pay Revision in favour of respondent No.1.

14. On 30.01.2014, respondent No. 1 joined the 'R.L.S.Y.' College, after grant of bail and thereafter, regularly performed her duties with effect from 30.01.2014 to 03.03.2015 in the said college. During this period, the suspension of respondent No. 1 also came to be revoked vide order dated 14.03.2014 with effect from 30.01.2014.

15. However, on 04.03.2015, the appellant-University again suspended respondent No. 1 on the pretext of pending criminal proceeding against her, which involved moral turpitude and ordered her to report at the Headquarter of the Ranchi University.

16. Due to the serious nature of the allegations, the appellant-University on 18.12.2018 arrived at a decision to grant compulsory retirement to respondent No. 1 under the provisions of Section 67 of the Jharkhand State University Act, 2000.

17. On 17.01.2019, the appellant revoked the suspension order of respondent No. 1 dated 04.03.2015.

18. Immediately, thereafter on 25.01.2019, the appellant ordered the retirement of respondent No. 1 as per Section 67 of the Jharkhand State University Act, 2000 and paid her three months' salary in lieu of notice period. Since the retiral benefits of respondent No. 1 were not being paid, she made various representations.

19. It is only on 19.12.2019 that the Principal of 'R.L.S.Y. College sent the service record of respondent No. 1 and requested the appellant-University to settle the retiral benefits of respondent No. 1.

20. On 27.01.2020, respondent No. 1 made a representation for release of her P.F. amount.

21. On 16.10.2020, the Vice-chancellor of the University sanctioned payment of P.F. amount along with up to date interest to respondent No. 1, which was duly received by her.

22. Thereafter, on 16.01.2021, respondent No.1 again made a representation to the Registrar for the release of her pension and other retiral dues along with the arrears.

23. The appellant on 21.02.2021 and 15.03.2023 sent the requisite file pertaining to respondent No. 1 to the Department of Higher Education.

24. However, the Department of Higher and Technical Education vide letter dated 27.02.2021 informed the appellant-University regarding there being some discrepancies in the proposal made for fixation of pay of respondent No. 1 in the 5th Pay scale and the salary fixed in the 6th pay scale and further instructed them to file a proper report.

25. Since no action was taken, respondent No.1 was constrained to approach the writ Court for grant of retiral benefits.

26. The learned writ Court allowed the writ petition and directed the appellant herein to fix the pension of respondent No. 1 taking into consideration 6th and 7th pay revision and further directed the appellant to pay the benefits for which respondent No. 1 was legally entitled to, within a period of 12 weeks.

27. Aggrieved by the judgment rendered by the learned writ Court, the appellant-University has filed the instant appeal.

28. It is vehemently argued by Ms. Aprajita Bhardwaj, that the findings recorded by the learned writ Court are totally perverse and therefore, deserve to be set aside.

29. On the other hand, Mr. Indrajit Sinha, Advocate along with Ms. Prerna Jhunjhunwala, Advocate has supported the impugned judgment and vehemently argued that the legal position has been settled long time back and yet the appellants have unnecessarily dragged respondent No. 1 into this avoidable litigation and therefore, should be compensated in monetary terms by imposing cost.

30. We have heard the learned counsel for the parties and have gone through the materials available on record.

31. It is not in dispute that respondent No. 1 served the University as a lecturer and thereafter, while she was posted a member of the Jharkhand Public Service Commission, as many as six criminal cases came to be lodged against her by the Vigilance Department. Out of these six cases, she came to be acquitted in three cases, while the other three cases are still pending adjudication, but the fact remains that respondent No. 1 was never convicted. Even her suspension orders passed from time to time came to be revoked. Therefore, the only issue which was required to be decided by the learned writ Court was as to whether pendency of a criminal case can by itself be a bar for non-payment of retiral benefits including gratuity, pension, group insurance and leave encashment.

32. The issue is no longer *res integra*, as has been held by the learned writ Court and has otherwise been long decided by the Hon'ble

Supreme Court in ***Deoki Nandan Prasad-Vs.-Union of India, (1971) 2 SCC 330*** by holding the pension is not a bounty payable on the sweet will and the pleasure of the Government and the same is a valuable right vested in a Government servant. In the later judgments of the Hon'ble Supreme Court, pension has been held to be a right in (property), which cannot be withheld and is to be treated, as deferred salary. It is duly related and has a nexus with the salary payable to the employees as on the date of retirement.

33. The legal provisions regarding withholding of retiral benefits was a subject matter of a Full Bench of this Court in ***Dr. Dudh Nath Pandey versus State of Jharkhand and Others*** reported in ***2007 (4) JCR 1*** wherein while dealing with the provisions of the Bihar Pension Rules, the legal position was summed up as under:

“(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.”

34. However, the ratio laid down in the aforesaid Full Bench was doubted by another Bench and the reference was then made on 16.01.2020 to a Bench of 5 Judges. The Division Bench in the reference order referred the following questions for consideration of the larger Bench:-

“A. Whether encashment of unutilized leave forms part of salary?

B. Whether it would be admissible even after dismissal of the employee?

C. Whether the Full Bench has considered the provisions of encashment of unutilized earned leave in its proper perspective?”

35. Vide judgment dated 18.03.2025, question No. A was answered by the larger Bench by concluding that in view of F.D.Memo No.P.C.2-9-8/81/2150/b. dated 19.7.1984 and Memorandum No. PC-Miss-50/97/4158/V dated 05.05.1998 issued by the State Government stating that cash in lieu of unavailed Earned Leave is a form of salary. It was held that the leave encashment is also a form of salary.

36. Question B was answered by holding that an employee, who has been dismissed from service, is not entitled to leave encashment.

37. As regards Point 'C', it was held that an employee cannot be denied leave encashment even after conclusion of the departmental proceedings or criminal proceedings.

38. In view of the settled legal position, the learned writ Court committed no error in directing the appellant to fix the pension of respondent No. 1 by taking into consideration 6th and 7th pay revision and thereafter fixing the benefits and pay the amount of gratuity, leave encashment and other benefits for which respondent No. 1 was entitled in accordance with law in view of the fact that respondent No. 1 had neither been convicted nor was any punishment imposed upon respondent No.1 pursuant to any departmental enquiry.

39. Accordingly, we find no merit in this appeal. This appeal is dismissed leaving the parties to bear the cost.

40. Pending application(s), if any, shall also stand disposed of.

(Tarlok Singh Chauhan, C.J.)

(Rajesh Shankar, J.)

A.F.R.

APK/VK