IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2918 of 2000

==

Prabesh Prasad Singh son of Late Gopal Singh, resident of village-Somawan Police Station Dulhin Bazar, District Sub-divisional and Town Patna

.... Petitioner

Versus

1. The State of Bihar
2. The Accountant General, Bihar, Patna
3. Director, Government Stationery Store and Publication, Gulzarbagh, Patna-7.
4. Finance Commissioner, Government of Bihar, Patna

.... Respondents

==

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Pandey, Adv.
Mr. Dhaneshwar Prasad Gupta, Adv.

For the Respondent/s : Mr. Amarendra Kumar, A.C. to A.A.G.-3

==

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 26-06-2015

This is an application seeking quashing of the letter issued under Memo No. 32 dated 31.01.2000 under the signature of the Director, Government Stationery Store and Publication, Gulzarbagh, Patna, whereby it was communicated to the petitioner that on the basis of an enquiry held by a Committee constituted in compliance of an order of this Court passed in C.W.J.C. No. 3303 of 1999 and in course of such enquiry, publications of worth of Rs. 1,49,221.06 were found missing from the Store. The petitioner had retired as Publication In-charge and by the said letter dated 31.01.2000, he was asked to give his opinion on the said findings of the Committee. Subsequent order dated 11.02.2000 passed by the Director, whereby a decision has been taken to deduct an amount of Rs. 1,49,221.06 from pension/gratuity admissible to the petitioner and a sum of Rs. 66,484.60 to be recovered from the petitioner's entitlement of cash equivalent to unutilized earned leave, is sought to be challenged by seeking amendment in the writ application, through Interlocutory Application No. 3291 of 2015.

2. In the facts and circumstances, Interlocutory Application No. 3291 of 2015 is allowed. The petitioner is permitted to challenge the said order dated 11.02.2000 which has been brought on record by way of Annexure-9 to Interlocutory Application No. 3291 of 2015. The contents of Interlocutory Application No. 3291 of 2015 shall form part of the pleadings of the writ application.

3. This is not in dispute that the petitioner retired from the service of the State Government on 31.07.1997 while working as Publication In-charge of Government Stationery Store, Publication Department, Gulzarbagh. This is also not in dispute that before the petitioner superannuated from service on 31.07.1997, no disciplinary proceeding was initiated against him on the charge of any misconduct. After his superannuation, his entitlement for payment of pensionary benefits was, however, not being finalized.

4. Raising a grievance against non-finalization and payment of his pensionary benefits, cash equivalent to unutilized earned leave and arrears of salary arising out of enhanced dearness allowance, petitioner approached this Court by filing C.W.J.C. No. 3303 of 1999. A counter affidavit was filed in the said case on behalf of the Director, Government Stationery Store and Publication Department, Gulzarbagh, asserting therein that the petitioner did not hand over the charge of his office upon his superannuation and had left his office throwing the keys on the table of the Head Clerk. It was also asserted that certain irregularities were detected in the Book Stores, including shortage of publication worth several thousands of rupees for which a verification was being carried out. They took a plea that on completion of the said verification only, the actual computation would be done and the payment of the amount shall be made to the petitioner "as per rules after deducting the dues", if any, thereafter.

5. In view of such stand having been taken by the respondents, and in view of the stand of learned counsel appearing on behalf of the petitioner in C.W.J.C. No. 3303 of 1999, this Court disposed of the writ application with following order dated 11.11.1999:-

> "Mrs. Chatterjee, learned counsel for the petitioner fairly submitted that the writ petition may be disposed of with a direction to the authority concerned to finalise the verification within a fixed

> time and after giving opportunity to the petitioner to defend himself.
>
> In view of the fair stand taken on behalf of the petitioner, the writ application is disposed of with a direction to Respondent no. 3 to give adequate opportunity to the petitioner before completing the verification of the alleged irregularities and shortage. Respondent no. 3 shall complete the verification within two months of the receipt/production of a copy of this order. However, it is made clear that the petitioner shall fully cooperate in the matter and in case he shows any non-cooperation the authority concerned will be entitled to proceed with the verification ex parte in accordance with law, but must complete the verification within the aforesaid time. Thereafter Respondent no. 3 shall take all necessary steps and issue necessary sanction order for payment of the remaining aforementioned dues of the petitioner after deducting the dues if any found in course of verification within two weeks of completion of the verification."

6. It is the case of the petitioner that after passing of order of this Court dated 11.11.1999, no notice was given to the petitioner by the respondents, which they were required to do for the purpose of verification of shortage found in the stores of the Government Stationery Store, Gulzarbagh. It is his case that on 22.12.1999, he had gone to the office only to enquire about the development in the light of the said order of this Court dated 11.11.1999, when he was served upon a letter dated 17.12.1999. It is the case of the petitioner that thereafter, no enquiry was held in the presence of the petitioner and the respondents came to a conclusion, as regards shortage of publications, holding the petitioner responsible for such shortage, on the basis of an enquiry held behind his back.

7. It is further case of the petitioner that for the purpose of withholding pensionary benefits, it was obligatory upon the respondents to have taken recourse to the relevant provisions of Bihar Pensions Rules and that without resorting to Rule 43(b) of the Bihar Pension Rules, the respondents passed an illegal order deciding to withhold the amount of gratuity.

8. Learned counsel for the petitioner has contended, referring to the impugned order, that though a copy of the letter dated 17.12.1999 constituting a Committee for the verification of shortage of publications in the Store was served upon the petitioner on 22.01.1999, the said Committee had already started an enquiry on 20.12.1999, as would be evident from the impugned order dated 11.02.2000 itself. He submits that the so called enquiry said to have been conducted in the light of the order of this Court dated 11.11.1999 was held not as per the orders of this Court rather in breach of it, inasmuch as the petitioner was not given due opportunity of hearing before the Committee constituted for the purpose of verification of shortage of materials in the store. The order dated, 11.02.2000, withholding permanently the amount of gratuity, based on the such enquiry is not sustainable, he contends.

9. A counter affidavit has been filed on behalf of the respondents stating that in compliance of the Court's order dated 11.11.1999, by an order dated 17.12.1999, a three-man Committee was constituted for verification and recount of the Book Stores of Publications Branch, with respect to which the petitioner was informed. It has been asserted in the counter affidavit that despite receiving the letter dated 22.12.1999, the petitioner did not participate and appear before the Committee, as he was required to do in compliance of this Court's order dated 11.11.1999. It has been stated that accordingly, upon due verification of the Book Depot, a letter was sent to the petitioner on 31.01.2000 giving him further opportunity to place his case. It has also been stated that the petitioner had raised objection thereafter and after considering his objection, the respondents came to final decision to make recovery of the amount by the order dated 11.02.2000.

10. Learned counsel appearing on behalf of the respondents has submitted that the petitioner was given due opportunity in course of verification of the Store, which the petitioner failed to avail and acted in violation of this Court's order dated 11.11.1999.

11. From the rival pleadings made in the writ application and in the counter affidavit and submissions made on behalf of the parties, there is no dispute about the fact that the respondents have taken a decision to withhold the amount of gratuity which the petitioner was entitled to on the date of his retirement without following the provision under Rule 43(b) of Bihar Pension Rules, 1950 (hereinafter referred to as the Rules). Pension and gratuity of the employees of the State Government are governed by Bihar Pension Rules, 1950. Rule 43(b) of the said Rules confers upon the State Government the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specific period, if a pensioner is found in a departmental or judicial proceeding, guilty of grave misconduct or to have caused pecuniary loss to the government by his conduct or negligence during his service. Proviso to said Rule 43(b) contemplates that such departmental proceeding, if not initiated against the government servant who was on duty before his retirement, shall not be instituted save with the sanction of the State Government and shall be, in respect of an event, which had taken place more than four years of the initiation of such proceeding. As has been noticed above, no proceeding against the petitioner was initiated under Rule 43(b) of Bihar Pension Rules, 1950 nor any departmental proceeding was pending when the petitioner retired from service. There is no dispute about the fact that the petitioner has not been found guilty of grave misconduct or to have caused pecuniary loss to the State Government by way of misconduct or negligence during his service "in a departmental or judicial proceeding" as no departmental proceeding was ever initiated against him.

12. If the Committee found certain irregularities for shortage in the stores, it would have been well within the jurisdiction of the competent authority to have initiated action against the petitioner, immediately thereafter, in terms of said Rule 43(b) of the Bihar Pension Rules. There cannot be any dispute that under Bihar Pension Rules, 1950, pension includes gratuity.

13. In such view of the matter, I am of the considered view that the manner in which the amount of gratuity of the petitioner, which he was otherwise entitled to under the Pension Rules, is sought to be withheld cannot be approved. I, therefore, set aside the order dated 11.02.2000 passed by the Director, Government Stationery Store and Publication Department, Gulzarbagh to the extent it relates withholding the amount of gratuity, which the petitioner was legally entitled to upon his retirement from service. The said order dated 11.02.2000 is accordingly quashed.

14. Since the amount of gratuity was wrongly withheld by the respondents for all these long years, in my opinion the petitioner shall be entitled for interest on the said amount. I accordingly, direct the respondents no. 2 and 3 to ensure that the remaining amount of gratuity is paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order along with interest at the rate of 8 per cent per annum.

15. This application is, accordingly, allowed.

16. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

Vats/-

U			