IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12655 of 2008

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Shiv Aashish Choubey .... Petitioner/s

Versus

The State of Bihar & Ors .... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Jai Shankar Pathak
For the Respondent/s : Mr. (Sc1)
Mr. J.P.Karn
Mr. Kumar Priya Ranjan

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

8 27-07-2015 I have heard learned counsel for the petitioner and learned counsel for the respondents. At the time of hearing only two issues have been raised for consideration.

It is submitted on behalf of the petitioner that though the cash was kept by him for payment of seasonal employee in terms of the direction of this Court, however, 18% interest has been imposed upon the petitioner for keeping the amount even though the Executive Engineer had categorically stated that amount was kept for the aforesaid purpose. A counter affidavit has been filed on behalf of the Accountant General Audit, Bihar, Patna taking a stand that the cash was kept by the petitioner in violation of the existing rules. Even if advance was given for certain purpose, at the end of month, the same should have been deposited back and at the end of the month and again, if required the same could again been withdrawn in the next month but the petitioner had kept it since March 2006 till 15.05.2008. Thus it has to be deemed that the money was kept by the petitioner for his personal use and, accordingly, interest @ 18% has been imposed. It is stated that the interest imposed was as per the bank rate prevalent at that point of time. .

In my considered opinion also the petitioner should not have kept the cash with him against the existing financial rules. It has not been stated on behalf of the petitioner that the money was kept in consonance with the financial rules rather a stand has been taken that the advance was taken and the same was kept for payment of seasonal worker in terms of the High Court. However, the money was admittedly kept since 2006, though according to the A.G. Audit even cash advance should have been deposited back at the end of the month and if needed should have been drawn again in the next month. There is no justification as to why the petitioner deposited the entire amount of Rs. 1, 53,644 in lump sum after objection having been raised in the year 2007.

Learned counsel for the petitioner has not able to bring any order of this court on record directing that the money should be kept against the rule for compliance of its direction. In that view of the matter, I do not find any illegality in the audit objection made. However, in view of the fact that the executive Engineer has also written that the money was kept with him for payment to the seasonal worker, in my considered view it would be harsh to impose penal interest apart from interest at the banking rate and as such fresh decision should be taken by the A.G. Audit, Bihar, Patna with respect to the penal interest of about 6% .

Learned counsel for the petitioner has raised another issue that Rs. 12,194/- has been illegally adjusted against vide annexure-10 though the Superintending Engineer has written to the Executive Engineer that there was no such direction given to him and contrary to his direction he has adjusted the same. In that view of the matter I direct the Engineer-in-Chief Water Resources Department to take a decision in the matter within a period of six weeks from the date of receipt/production of a copy of this order.

With the aforesaid observation and direction the application stands disposed of.

(Dr. Ravi Ranjan, J)

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