IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.748 of 2014

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Madhu Ranjan Kumar Gupta Son Of Sri Raghubar Dayal Resident Of Hazari Mohalla, Jalla Gali, Raj Cold Store Campus, P.S.- Khazekala, Patna City, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through Chief Secretary, Govt. Of Bihar, Patna
2. The Chief Electoral Officer, Bihar Cum Principle Secretary, Election Department, Govt. Of Bihar, Patna- 800015
3. The Accountant General, Bihar, Beerchand Patel Marg, Patna
4. The Principal Secretary, Finance, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amit Prakash, Adv & Mr. Anjani Kr Jha, Adv
For the State : Mr. Dev Kr Pandey AC to GA-6
For the A.G. : Mr.Ajit Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

7 17-03-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ application is plain and simple, inasmuch as, all he wants that a direction should be issued to the respondents to make payment of death cum retirement benefit, gratuity as also payment of leave encashment for 300 days. Though, other prayers were also made in this writ application but Mr. Amit Prakash, learned counsel for the petitioner does not intend to press those reliefs as they would be virtually claim of inservice benefits for which the petitioner may have to take other recourse by filing either fresh writ application or the moving the competent Court/forum.

As with regard to both the payment claimed by the petitioner, there would be hardly any dispute that if the petitioner was Government servant and had retired from service, he would be entitled for payment of gratuity and leave encashment. To that extent the respondents also do not dispute such claim of the petitioner. The case of the respondents as explained in the counter affidavit is that on account of certain excess payment drawn by the petitioner, he would not be entitled for payment of gratuity and leave encashment. This has been sought to be explained by the respondents in the counter affidavit and they have brought on record certain Government decision that though the petitioner was entitled for grant of ACP but the pay scale in such ACP granted to him were higher than were admissible. According to the learned counsel for the Respondents on account of wrong pay fixation in the higher pay scale at the time of grant of ACP to the petitioner, he has received excess amount of salary and therefore, while making payment of the amount of gratuity and leave encashment the same has to be adjusted.

Mr. Amit Prakash, learned counsel for the petitioner however comes out to oppose this submission of learned counsel for the State that no excess amount was paid to the petitioner. According to him the Rules dated 22.12.2006 notifying the pay scale in which the petitioner was granted ACP would be the entitlement of the petitioner and if such payment was made in the pay scale as prescribed under Rule-4(4) of Bihar Election Service Rules that cannot be said to be excess payment.

In the considered opinion of this Court, the issue is not so simple. Rule 4(4) of Bihar Election Service Rules which was notified on 22.12.2006 at best would come into force w.e.f the Rule being published in the Bihar Gazette i.e. 22.12.2006. On 22.12.2006, the pay scale of each and every Government servant has changed w.e.f. 01.01.2006. The question, however, is that the petitioner's first ACP benefit has to be given in the year 1999 and the second in the year 2004 and thus the pay scale notified in 2006 Rules can not be made applicable retrospectively.

This Court would in fact find an apparent fallacy the submission of learned counsel for the petitioner. Such rule coming into force w.e.f. 22.12.2006 in absence of its being retrospective operation in terms of Rule-18 of Bihar Election Service Rules can have no retrospective operation so as to give benefit to the petitioner of the higher pay scale notified in the year 2006 w.e.f. 1999. At the same time, respondents also will not be fair on relying Government decision of the Finance Department notified on 24.02.2012, clarifying this aspect that for the post of Deputy Chief Electoral Officer, the pay scale from the year 1996 onwards is Rs. 8000-13500 and not Rs. 10,000-15,200/-. The issue in fact was required to be decided in case of the petitioner who rightly or wrongly has received payment in the higher scale. If such amount was even sought to be recovered by way of adjustment, the petitioner was entitled to a show cause notice before taking such action of recovery and/or adjustment. The respondents could not have withheld the amount of gratuity and leave encashment for recovering the excess amount paid to the petitioner without issuing a show cause notice and/or opportunity of hearing extended to the petitioner.

In that view of the matter, this Court would direct the Finance Secretary to authorize some senior officer of the Finance Department to issue a show cause notice to the petitioner as with regard to the proposed adjustment of the amount of gratuity and leave encashment by way of recovery of the alleged excess amount of salary drawn by the petitioner on account of two ACP and the petitioner thereafter will be entitled to file his show cause reply. A final decision thereafter will be taken by the State Government again after considering the stand taken by the petitioner in the show cause reply. Let it be noted that since the issue relates to payment of gratuity and leave encashment the Finance Secretary would be also under an obligation to take approval of his order from the State Government. This Court hopes and believes that this exercise would be completed within a period of six months from the date of receipt of this order.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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