

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2475 of 2015

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Rajeshwar Prasad (Ex-Driver of Electricity Transmission Division Purnea)
S/o Late Thakur Prasad R/o Subhash Nagar, Polytechnic Chawk, Purnea,
P.S. Maranga, District - Purnea.

.... Petitioner/s

Versus

1. North Bihar Power Distribution Company Ltd. through its M.D.
2. The Bihar State Transmission Company Ltd.
3. The Managing Director-cum-Chief Engineer, Transmission Zone - 2, Muzaffarpur.
4. The Superintending Electric Engineer, Transmission Division, Purnea.
5. The Electric Executive Engineer, Transmission Division, Purnea.
6. The Accounts Officer, Electricity Transmission, Circle, Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : No.

For the N.B.P.D.C.L : Mr. Vinay Kirti Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

5 22-04-2015 No one appears for the petitioner.

Learned counsel for respondents is present.

The prayer of the petitioner in this writ
application reads as follows:-

“For payment of the entire retrial benefit to the petitioner.

For payment the Rs. 45909.13 with interest which was deducted from the amount of gratuity from the petitioner, as he was discharging his service duty till the date 06.03.1997 while he was retired from the service on 31.08.1996, by the Officer Order No. 36 dated 06.03.1997, with effect from 31.08.1996, as such he drew the excess salaries and other allowance from the date 31.08.1996 to 06.03.1997.

For payment the amount of gratuity of 120 days with the house rent allowance and medical allowance as it was sanctioned without those allowance.”



In this case a counter affidavit has been filed, wherein, it has been stated that the petitioner was appointed in the service of the Board in the year 1965 on the basis of his date of birth recorded in the Service-Book as 03.08.1936. It has been further explained that the said entry in the date of birth in the Service-Book was sought to be interpolated by changing 1936 to 1946, which was authentically discovered on the basis of the report of the FSL dated 17.01.1997. The respondents have also stated that the petitioner on the basis of this report of the FSL was sought to retire w.e.f. 31.08.1996 treating his date of birth as 03.08.1936. Such order, however, was based on the order dated 06.03.1997.

It has also been stated that the petitioner thereafter was paid the amount of retirement benefit and the present writ application filed on 09.01.2015 after 18 years of the cause of action without assailing the order dated 08.02.1997, is wholly belated. The respondents have also come out with a defense that they would need

some more time to locate the Service-Book of the petitioner as it is a very old matter.

As noted above, the grievance of the petitioner is for payment of retrial benefits. The petitioner will be entitled to get all his retirement benefits only on the basis of his length of service upto 31.08.1996. Any such amount of retirement benefit has not been paid to the petitioner, the same may be calculated and paid to the petitioner.

As with regard to the recovery of Rs. 45,909.13/- , all this Court in absence of proper explanation in the counter affidavit can only say that though the petitioner length of service would be only confined to 31.08.1996 but then as his order of retirement is with prospective effect which was passed on 08.02.1997, he may be entitled for payment of salary for the work done till 08.02.1997. This payment of salary, however, will not in any way ennure to the benefit of the petitioner either in computation of his retirement benefits for which the



length of service would be confined only up to 31.08.1996 or by way of double payment i.e. pension for the period from 01.09.1996 to 08.02.1997. In other words, since the petitioner would be entitled for payment of salary for 01.09.1996 to 08.02.1997, he will not be paid any pension for the said period. Secondly, the entire recovery of Rs. 45,909.13/- has been made only on account of excess salary drawn by the petitioner for the period from 01.09.1996 to 08.02.1997 or part thereof, the same must be refunded to the petitioner but there would be no question of payment of interest on the aforementioned amount, inasmuch as, there is finding of interpolation in the date of birth duly substantiated in the report of the FSL.

The prayer of the petitioner for payment of amount of gratuity of 120 days is wholly unsustainable because the gratuity is paid by way of salary for every 15 day after completion of one year of service, inasmuch as, such prayer of the petitioner for amount of gratuity of

120 days is hereby rejected.

If the petitioner has been not paid his HRA and medical allowance, he can lead satisfactory evidence in support of his such claim and the respondents will be under an obligation to consider the same and also make its payment, if it has not been paid, till the petitioner has been working prior to the order dated 08.02.1997, when he was sought to be superannuated w.e.f 31.08.1996.

Considering the defence of the respondents in I.A. No. 1955 of 2015 and specially the fact that the petitioner had moved this Court after 18 years of the cause of action, the delay in filing of the counter affidavit gets well explained. Consequently the cost imposed by this Court in the order dated 26.02.2015, is hereby recalled.

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

(Mihir Kumar Jha, J)

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