IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4728 of 2015

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Ram Naresh Singh, retired Accounts Assistant, son of Late Rijhan Singh, resident of Village and P.O.- Kokasa, Police Station- Desari, District- Vaishali.

.... Petitioner/s

Versus

1. The Bihar State Power Holding Company Ltd., Bailey Road, Patna, through its Chairman.
2. The General Manager, Bihar State Power Holding Company Ltd., Bailey Road, Patna.
3. The Deputy General Manager, Bihar State Power Holding Company Ltd., Bailey Road, Patna.
4. The Electrical Chief Engineer (Establishment), Bihar State power Holding Company Ltd., Bailey Road, Patna.
5. The Electrical Executive Engineer (Establishment), Muzaffarpur Thermal Power Station, Kanti, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ganjendra Kumar Singh

For the Respondent/s : Mr. Vinay Kirti Singh

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

3 04-05-2015 Heard learned counsel for the parties as with regard to the following prayer made in this writ application:-

> *"1(a) For a direction to the respondents to pay interest at the rate of Rs. 5% on the amount of gratuity and its arrears amounting to Rs. 3,82,853/- which was paid 6 years and nine years after his retirement.*
>
> *(b) For a direction to the respondents to pay litigation costs of Rs. 50000/- to the petitioner because he has been compelled to move thrice before this Hon'ble Court for redressal of his grievances."*

Mr. Udit Narain Singh, learned counsel for the petitioner, has submitted that there is no dispute on the basic fact that the petitioner had retired from service on 30.9.2005 but, his payment of retirement benefit was made belatedly and, as such, he would be entitled for payment of interest as quantified by the petitioner in paragraph no.1(a) of the writ application. He has also submitted that the petitioner was coerced to move this Court on three occasions for payment of retirement benefit and, as such, the respondents would become liable to pay cost to be quantified at Rs. 50,000/-.

In this case, a counter affidavit has been filed and the learned counsel for the respondents has explained that the delay in payment of pension and other retirement benefit had arisen on account of the excess salary drawn by the petitioner by way of double pay fixation at the time of his promotion. The respondents have also explained that the petitioner was paid a sum of Rs. 1,43,598/- in excess way back in the year 1996 onwards and, therefore, if the respondents have recovered the aforesaid amount of Rs. 1,43,598/- and that too without charging any interest for the period it was retained by the petitioner, the equity would be in favour of the respondents who cannot be allowed to loose on both the ends.

By now it is well settled that payment of retirement benefit must be made immediately after the retirement of the employee. In the case of the petitioner, when he had retired and his pension papers were sent for calculation, it was discovered that he had over-drawn a sum of Rs. 1,43,598/- during the period of his service on account double pay fixation. The petitioner does not deny this fact that such double pay fixation was not admissible to him. Thus, the payment of Rs. 1,43,598/- was an excess payment. It is a different thing that ultimately in the light of the judgment of the Apex Court and this Court in the year 2011, it was held that a retired employee should not be subjected to recovery and on the basis of the same, the recovery of petitioner's excess amount of Rs. 1,43,598/- was also held to be bad.

Therefore, there would be no difficulty in coming to the conclusion that even when the petitioner was not entitled for the aforesaid amount of Rs. 1,43,598/-, he was allowed to retain payment of such excess amount only on the ground of equity. Thus, the question of calculation of payment of amount of retirement benefit for the purpose of delayed payment and the liability of payment of interest can only be gone into by drawing a balance-sheet as to how much amount in excess the petitioner had drawn and if it is found that the petitioner had retained the aforesaid amount of Rs. 1,43,598/- in the service period to which he was never entitled, the liability of the respondents to pay interest as per the government circular to the tune of Rs. 5% per annum interest has to be re-determined.

When such an observation has been made, learned counsel for the petitioner does not want to press this application.

That being so, this application is dismissed, as not pressed.

(Mihir Kumar Jha, J)

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