IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1359 of 2012
IN
Civil Writ Jurisdiction Case No 3569 of 2009

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Shankar Prasad Kedia S/O Late Parmeshwar Prasad Kedia R/O Mohalla: Subhas Chowk, Katki Bazar, P.S. & District- Darbhanga, Presently Residing At 24, Panchbati Apartment, Punaichak, Patna

.... Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary Government of Bihar, Patna
2. The Commercial Tax Commissioner cum Secretary Finance (Commercial Taxes), Bihar, Patna

.... Respondent/s

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For the Appellant/s : M/s Mrigank Mauli, Samir Kr & Sanjay Kr, Advocates

For the Respondent/s : Mr Girijesh Kumar, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 27-03-2015

Heard the learned counsel for the appellant and the learned counsel for the State.

2 The appellant retired from the post of Deputy Commissioner, Commercial Taxes, Bihar but has been denied full pension on the ground of pendency of a criminal case. He has moved the learned Single Judge for a direction for payment of full pension but in view of executive circulars, the validity of which was not under challenge, learned Single Judge has refused to grant him that relief. However, the learned Single Judge, in relation to other reliefs including earned leave, made some favourable observations. In this intra-Court appeal, the writ petitioner/appellant seeks and reiterates the same relief.

3 Mr Mrigank Mauli, learned counsel in support of the appeal submits that the criminal case is pending for over 25 years. It has now been stayed, in so far as appellant is concerned, by the Jharkhand High Court on ground of illegality in grant of sanction. This Court is conscious of Rule 43 (C) of the Bihar Pnesion Rules which has been introduced in the year 2012 which, in clear terms, states that if there are disciplinary proceedings or other judicial proceedings pending against an employee at the time of his superannuation then his pension shall stand reduced pending conclusion of those proceedings but not less than 90%. In that view of the matter, 90% pension already has been sanctioned and is being paid. No further relief is due at this stage.

4 It is then pointed out that a departmental proceeding was also initiated against the writ petitioner/appellant. After enquiry, the departmental proceedings were dropped. But the criminal proceedings are being continued. In our view, it is open to the writ petitioner/appellant to take appropriate steps to get the criminal proceedings concluded at an early date especially as it is at his instance, the proceedings before the trial Court have been stayed, so far as he is concerned, by the Jharkhand High Court.

5 It is next submitted that though the learned Single Judge authorized the payment of earned leave by granting the same, State has retained Rs 10,000/- for some dues that may crop up. We are afraid there cannot be any such retention. Unless law authorizes the State to retain any money of an employee or a retired employee merely on the ipse dixit of authorities, no deductions or retentions can be made. Therefore, unless there is any amount due from the writ petitioner/appellant to the State, nothing can be withheld. It has got to be paid.

6 With these observations, this appeal stands disposed of.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

M.E.H./-

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