IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6191 of 2008

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Raj Kishore Tiwari S/o Late Ambika Tiwari, Resident of Village- Jandaha, P.S.- Ramgarh, District- Kaimur at Bhabua

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director, Secondary Education, Bihar, Patna
3. The District Education Officer, Kaimur
4. The Sub-divisional Education Officer, Bhabua (Kaimur)
5. The Treasury Officer, District Treasury, Kaimur at Bhabua
6. The Accountant General (A & E), Bihar, Patna
7. The District Provident Fund Officer, Kaimur, Bhabua

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravi Shankar Sahay

For the Respondent/s : Mr. Binod Kumar Labh

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 21-04-2015

Heard learned counsel for the petitioner, learned AC to AAG No. 14 as well as Sri Binod Kumar Labh, learned counsel, who has appeared on behalf of the respondent no. 6 / Accountant General, Bihar.

The petitioner, who is a retired teacher has approached this court by invoking its writ jurisdiction under Article 226 of the Constitution Of India, with a prayer to direct the respondents to pay all the retiral dues including provident fund amount and the amount deducted from his gratuity and further for other arrears of difference of pay.

In this case number of orders were passed and finally by way of filing supplementary counter affidavit on behalf of the respondent no. 7 i.e. District Provident Fund Officer, Kaimur, Bhabua it was indicated that all the amount of provident fund has already been paid, however, nothing has been indicated regarding the amount deducted from gratuity of petitioner whereas in paragraph no. -8 of the writ petition a specific stand was taken that Rs. 46792/- was deducted from gratuity amount of petitioner that too without providing any opportunity to the petitioner.

Learned counsel for the petitioner has referred to Annexure – 3 to the writ petition which is a communication issued from the office of Accountant General, Bihar, to the District Superintendent of Education – cum – Sub Divisional Education Officer, Bhabhua, whereby it was indicated that petitioner was incorrectly granted some higher scale without approval of Finance Department but of-course along with the writ petition no such order has been brought on record to show deduction of amount from the head of gratuity.

By way of filing counter affidavit Accountant General, Bihar, in its paragraph no. -5 has accepted that the amount of Rs. 46792/- has been deducted from gratuity.

Though in this case the respondent no. 3 i.e. District Education Officer, Kaimur has filed a counter affidavit, there is no denial to the statement made in paragraph no.- 8 of the writ petition regarding deduction of amount from gratuity without affording any opportunity to the petitioner, nor the State has taken any plea that petitioner has got enhanced pay scale by committing any fraud or any misrepresentation.

In view of the fact that there is no allegation of misrepresentation or commission of fraud by the petitioner, after retirement, there was no reason for the authority concerned to deduct any amount from gratuity of the petitioner that too without providing any opportunity to explain. Since there is no denial, the court is of the opinion that petitioner is entitled to get the deducted amount refunded.

Learned counsel for the petitioner accepts that other retiral dues have already been paid to the petitioner.

In view of the fact that deduction was illegal and made after retirement from gratuity amount of the petitioner, the writ petition stands allowed with a direction to the respondents to refund the deducted amount to the petitioner within a period of eight weeks from the date of receipt / production of a copy of this order, failing which, petitioner shall be entitled to get interest on deducted amount at the rate of 9% per annum.

The writ petition stands disposed of.

(Rakesh Kumar, J)

Praful/-

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