

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17805 of 2014

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Purnendu Kumar Choudhary Son of Late Indu Shekhar Choudhary Resident of Mohalla - Mishratola, P.S. - Town, District - Darbhanga at present C/o Shri Shardendu Choudhary, 24/39 Text Bool Colony, P.O. Keshri Nagar, P.S. Patliputra, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Finance, Government of Bihar, Patna.
2. Principal Secretary, Department of Finance, Government of Bihar, Patna.
3. Director, Provident Fund Directorate, Bihar, Patna.
4. Assistant Director, Provident Fund Directorate, Bihar, Patna.
5. District Provident Fund Officer, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durga Nand Jha, Adv

For the Respondent/s : Mr. A.Ujjwal SC 25

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 09-07-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:-

"(i) Issuance of a writ in the nature of Mandamus directing and commanding the Respondents to pay the entire retiral dues to petitioner including full pension, Gratuity, leave encashment, 3rd A.C.P. and due increments for the year 2008, 2009 and 2010 with interest @ 18% as also Penal interest in addition to adequate amount of compensation for harassing

and causing mental agony to petitioner.

(ii) Issuance of an appropriate declaration and holding that since the petitioner has superannuated on 31.07.2010 and has submitted papers as per departmental instruction, but even on laps of more than four years nothing has been paid to petitioner in respect of full and final gratuity, Leave encashment, balance of 10% pension, due 3rd A.C.P. and due increments for the year 2008 to 2010 and therefore, the Respondents are liable to pay the entire dues with interest @ 18% per annum along with adequate amount of compensation for causing mental agony, economic harassment in addition interest for delayed payment from the date of superannuation till the date the same is being paid.

(iii) Issuance of an appropriate declaration and holding that pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting in a Government servant and therefore, pension, Gratuity and leave encashment cannot be withheld as has been held by the Hon'ble



Supreme Court of India in the case of State of Jharkhand and others Versus Jitendra Kumar Srivastava and another.

(iv) Issuance of an appropriate declaration and holding that in the light of judgment of Hon'ble Supreme Court of India passed in the case of State of Kerala versus Padma Nabhan Nair, the Respondents were obliged to pay the Gratuity on the date of retirement or on following day; pension on expiry of following month and in event of delay with interest at market rate commencing from the date of retirement."

As with regard to the aforesaid prayer of the petitioner in this writ application so far it relates to payment of retirement benefits such as pension, gratuity and leave encashment, this Court on finding from paragraph no 6 of the counter affidavit that admissible payment have been made to the petitioner it would still direct the authorities to re-examine the claim of the petitioner now confined to certain amount of leave encashment though sanctioned, has allegedly not been

paid to him. In this regard, it would be relevant to quote paragraph no. 6 of the counter affidavit, which reads as follows:-

“That at the very outset the present respondent very humbly submits that what was found payable to the petitioner i.e. General Provident Fund, Group Insurance and encashment of earned leave have already been paid to the petitioner vide authority letter bearing No. 6004 dated 31.07.2010 amounting to Rs. 3,86,4767/- sanction letter bearing No. 6477 dated 14.08.2010 amounting to Rs. 1,30,101/- and letter bearing No. 1267 dated 20.06.2015 amounting to Rs. 2,56,242/- respectively.”

In that view of the matter, if the petitioner has not been paid the amount of leave encashment sanctioned on 20.06.2015 to the tune of Rs. 2,56,242/-, its payment must be made by the respondents to the petitioner within a period of one week from the date of receipt/production of a copy of this order.

Reverting back to the rest of the grievance of the petitioner, this Court must take notice of the fact that in a departmental proceeding pending against the petitioner for which he had already been placed under suspension prior to 19.11.2009, an order of punishment of forfeiture of 100 per cent pension and gratuity has

been passed.

Faced with this situation Mr. Durga Nand Jha, learned counsel for the petitioner submits that the petitioner now has to assail the aforementioned order before appropriate forum/Court.

In that view of the matter, a liberty is given to the petitioner to assail the aforementioned order of punishment in accordance with law.

With the aforesaid liberty, observation and direction this writ application is disposed of.

(Mihir Kumar Jha, J)

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