IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3207 of 2015

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Satya Narayan Sah Son of Late Madan Sah resident of at Sapha, P.O. Gamharia - Rampur, P.S. Sour Bazar, District - Saharsa

.... Petitioner/s

Versus

1. The State of Bihar through the Principakl Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna
2. The Director of Survey and Settlement Revenue Board, Government of Bihar, Patna
3. The District Magistrate-cum-Collector, Khagaria.
4. The Settlement officer, Khagaria
5. The Incharge officer, Settlement officer, Khagaria
6. The Accountant General, Bihar, Birchand Patel Marg, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate.
For the Respondent/s : Mr. A.Ujjwal, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

2 26-02-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

> *"... commanding and directing the Respondents concerned to pay the petitioner pension and all other admissible post retiral benefits as the poor old petitioner has superannuated on 30.06.2014 from the post of Peon in the Settlement Office, Khagaria, but till date not a single farthing has been paid to the poor retired fourth grade employee, due to which he alongwith his family is on the verge of starvation."*

2. Learned counsel for the petitioner, at the outset, has submitted that there cannot be any dispute with regard to dates namely 28.11.1969 being the date of appointment of the petitioner and the date 30.06.2014 being the date of retirement of the petitioner. He has, therefore, gone to explain that the reason for non-payment of retirement benefits of the petitioner on the ground

that he had continued in service beyond 40 years of service, is wholly unjustified.

3. Learned counsel, however, very fairly submits that length of service of the petitioner for the purpose of pension i.e. qualifying service for grant of pension could only be a period of 42 years and whatever amount was found admissible and payable, on the basis of such continuance in 42 years by way of last salary would be qualifying amount on which the petitioner would earn his pension. He, however, in the same breath, has also submitted that as the petitioner had never made any fraud and/or misrepresentation, he would not be liable to be subjected to any refund of amount for the work done by him beyond the period of 40 years of service specially when he was a Class-IV employee and his order of retirement was also notified on 16.06.2014 by the Respondents communicating his date of retirement to be 30.06.2014.

3. Mrs. Bandana Singh, Learned counsel for the State, is not in a position to deny the aforesaid admitted facts, but she submits that since the petitioner had drawn salary for the period of four and half years to which he was not entitled, the petitioner would be liable to refund the amount of excess payment of salary. She, therefore, explains that this adjustment of excess salary paid

to the petitioner was fit to be recovered from his retirement benefits.

4. In the considered opinion of this Court, the stand taken by the learned counsel for the petitioner is very fair and in fact equitable.

5. True, it is. Under the Government decision, a person can serve only up to maximum period of 42 years of service and, therefore, if the date of birth of the petitioner was 28.11.1969, he could have continued in service up to 28.11.2011 i.e. the date on which he had completed 42 years of service. The petitioner, however, was allowed to continue in service even after 28.11.2011 and, in fact, to him the retirement notice was given only on 16.06.2014. Thus, the respondents, having taken work from the petitioner, cannot now recover the amount of salary paid to him for the period 29.11.2011 to 30.06.2014.

6. This aspect of the matter has in fact been also settled in the judgment of the Apex Court in the case of ***Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.*** reported in ***(2012)8 SCC 417*** wherein it has been held that even if an excess amount has been paid, its recovery from a retired employee is not permissible in the eye of law.

7. In the present case, however, this Court would also

not find that such amount of salary paid to the petitioner for the period 28.11.2011 to 30.06.2014 was the excess amount because the petitioner was allowed to continue in service, even without any fraud or misrepresentation on his part. There will be thus no question of recovery of any salary paid to the petitioner for the period 28.11.2011 to 30.06.2014.

8. The same position, however, will not be available to the petitioner in respect of payment of his retirement benefits inasmuch as the maximum period of service of the petitioner could have served was 42 years. Thus, the salary to which the petitioner was admissible as on 28.11.2011 i.e. till the month of November, 2011, shall be salary on which the retirement benefit including monthly pension, Gratuity, Leave Encashment and other benefits will have to be paid. Therefore, this exercise must be done by the respondents to ensure that whatever amount is admissible and payable to him on the head of retirement benefits, must be paid to him within a period of three months from the date of receipt of a copy of this order.

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

(Mihir Kumar Jha, J)

Sujit/-

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