

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3235 of 2015

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Ganga Ram Mahto, son of Late Domi Mahto, resident of village- Gidrahi,
Block- Marauna, P.S.- Kishanpur, District- Supaul

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department,
Bihar, Patna
3. The Director, Primary Education, Govt. of Bihar, Patna
4. The District Magistrate, Supaul
5. The District Education Officer, Supaul
6. The District Programme Officer (Establishment), Education, Supaul
7. The Block Education Officer, Marauna
8. The Drawing Disbursing Officer, Middle School, Gidrahi, Block & P.S.-
Maraun, District- Supaul
9. District Provident Fund Officer, Supaul
10. The Treasury Officer, Supaul
11. The Accountant General, Bihar, Virchand Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha, Advocate.

For the Respondent/s : Mr. P.N.Shahi, AAG 10

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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:

"1(i) For a direction to the respondent authorities to make payment of amount of entire post retirement benefits like amount of Gratuity, amount of leave encashment, pension, amount of computation of pension, amount of GIC/LIC, amount of Statutory interest on G.P.F. till the actual payment to the petitioner and for payment of arrears of difference of salary for the period of 01.01.1971 to 31.03.1973 which was directed to be deposited in the G.P.F. account of teachers due to take over the School under the Govt.

(ii) To grant Bank interest @ 9% compound per annum over and above the due amount of the petitioner.

(iii) Further for quashing impugned letter no. 940 dt. 28.08.2012 and order of recovery amounting of Rs. 3,22,414/- from Gratuity and then direction may be issued to the respondents to pay the arrears of wages which has not been paid to the petitioner since 01.02.12 to 31.1.14 for the period in which the petitioner has been illegally retired from his service at the age of 58 years instead of 60 years."



2. Learned counsel for the petitioner however at the outset has prayed to confine his prayer in respect of paragraph no. 1(i) alone and in this regard he has submitted that he is no longer interested in pressing for prayer made in paragraph no. 1(iii) relating to quashing of the order of D.E.O., Supaul dated 28.08.2012 whereby and whereunder he was made to retire on completion of 42 years of service w.e.f. 31.01.2012 and would be satisfied if the order of recovery of the petitioner, as contained in Annexure-2, communicated by the District Education Officer, Supaul to the Accountant General dated 13.05.2014 indicating deduction of Rs. 3,22,414/- describing it to be an excess amount drawn by the petitioner for the period 1.2.2012 to 31.10.2012 is quashed.

3. In the considered opinion of this Court, once this fact has become admitted that the petitioner had entered in service on 02.01.1970, he could have at best continued for a period of 42 years i.e. up to 31.01.2012. The total length of pensionable service of the petitioner would be only for the period up to 42 years.

4. The real difficulty, however, for the respondents in making recovery of the salary paid to him for the period beyond 31.01.2012 to 31.10.2012, would be that the petitioner had never continued in service beyond 31.1.2012 by making any fraud or

misrepresentation. As a matter of fact, the petitioner was allowed to work and draw salary for the said post till 31.10.2012, therefore, there would be no question of any recovery from him on the basis of his retirement w.e.f. 31.01.2012.

5. In that view of the matter, the recovery sought to be made from the petitioner to the tune of Rs. 3,22,414/- by way of alleged excess salary drawn for the period 01.02.2012 to 31.10.2012 as indicated in the communication of the District Education Officer to the Accountant General, is hereby quashed. In other words, the respondents shall not be entitled to recover any amount of the salary and emoluments paid to the petitioner for the period 1st February, 2012 onwards till 31.10.2012 as work was taken from the petitioner before passing the order on 28.08.2012 for retirement of the petitioner w.e.f. 31.01.2012. As a matter of fact the aforesaid decision of D.E.O. dated 28.08.2012 in the case of the petitioner was given effect to w.e.f. 01.11.2012 inasmuch as the petitioner had been paid salary and emoluments till 31.10.2012 as is also apparent from the certificate of the Headmaster dated 24.10.2015 vide Annexure-3 to the writ petition.

6. Reverting back to the issue of payment of retirement benefit, this Court must make it clear that the communication made by the District Education Officer, as contained in Annexure-



2 of the writ application, otherwise is in order, because the maximum length of service for which the petitioner will be entitled for payment of retirement benefits, will be 42 years i.e. up to 31.01.2012. Thus, whatever salary was being drawn by the petitioner or could be drawn by the petitioner legitimately on 31.01.2012, would alone be the basis for fixation of his pension and other retirement benefits. This computation, therefore, has to be made by making a notional calculation of drawing his salary as if he had continued in service only up to 31.01.2012.

7. It is however made clear that the petitioner will not be entitled for payment of pension for the period February 2012 to October 2012 as he had been paid salary for the aforesaid period before giving effect to the order of D.E.O. dated 28.08.2012. Similarly the petitioner on account of giving up his prayer for quashing of the order dated 28.08.2012 passed by D.E.O., Supaul for retirement of the petitioner on completion of 42 years of service i.e. till 31.01.2012 shall also not be entitled for payment of salary for the period of November 2012 to January 2014 inasmuch as he had been made to retire w.e.f. 01.11.2012 only on the basis of the aforesaid order dated 28.08.2012.

8. In that view of the matter, this Court would direct the competent authorities of the State Government and the

Accountant General to make re-calculation of all his retirement benefits of the petitioner and also make payment of the admissible and payable amount of to the petitioner within a period of four months from the date of receipt of a copy of this order. If any amount of salary for the work done by him beyond 31.01.2012 and till 31.10.2012 has already been recovered from the petitioner, the same must be refunded to the petitioner within the same period after making necessary adjustment of the amount which has already been paid to the petitioner by way of salary for the period 01.02.2012 to 31.10.2012 as well as provisional pension and provisional gratuity.

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

(Mihir Kumar Jha, J)

Sujit/-

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