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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.540 of 2014

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Amod Kumar Mishra Son of Late R.N. Mishra retired officer in North Bihar Gramin Bank Kalambag Chowk, Muzaffarpur-842001 resident of Swami Nagar, Old Motihari Road, Bairiya Road Muzaffarpur, District-Muzaffarpur

.... Petitioner/s

Versus

1. The President/Chairman, Uttar Bihar Gramin Bank, Kalam Bag Chowk, Sharma Complex, Muzaffarpur- 842001
2. The General Manager, Uttar Bihar Gramin Bank, Kalam Bag Chowk, Sharma Complex, Muzaffarpur- 842001
3. The Zonal Manager, Uttar Bihar Gramin Bank, Kalam Bag Chowk, Sharma Complex, Muzaffarpur- 842001

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mahesh Narain Parbat, Sr. Advocate.
		Mr. Sanjiv Sharan, Advocate.
For the Respondent/s	:	Mr. Prabhakar Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

12 09-03-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:

> *"1.(i) For a direction to the respondents to pay the petitioner all his retiral dues/claims which is pending with the office.*
> *(ii) For further direction to the respondents to pay the interest upon the entire claims /arrears amount payable to the petitioner from the date they became due to till the date of their payment."*

3. Mr. Mahesh Narain Parbat, learned senior counsel appearing on behalf of the petitioner, in support of the aforementioned prayer, while referring to the different pleadings in the writ application, has ultimately come out with a case that the petitioner will be entitled for payment of a sum of Rs. 9,19,700/- .

The calculation given by the petitioner in this regard in paragraph no. 3 in the supplementary affidavit reads as follows:

"3. (a) Gratuity	*: 414700/-*
(b) Leave Encashment	*: 1,00,000/-*
(c) Insurance	*: 50,000/-*
(d) Stagnation increment of salary for 3 years	*: 1,80,000/-*
(e) Deputation allowance For the period 01.01.2007 to 30.04.2009	*: 1,75,000/-*
	Rs. 9,19,700/-

4. He has also invited attention towards the order of the Bank dated 30.04.2012 whereby and whereunder the petitioner was directed to refund the amount of Rs. 80611.90 with its up-to-date interest. According to Mr. Parbat, this order was in form of a show cause notice and the petitioner had immediately filed his reply on 07.05.2012 wherein while he had accepted the liability of recovery of the amount of subsidy but had denied his any liability towards loan documents. According to Mr. Parbat, as no decision was taken but ultimately when the Branch Manager had sought to make payment by issuing a cheque, the payment thereafter was stopped under the order of the higher authorities with the Bank. Mr. Parbat also submits that there is no service rule which entitles the Bank to recover any amount after the retirement of the employee.

5. On the other hand, learned counsel for the Bank, having filed counter affidavit and supplementary counter affidavit,

has submitted that when the petitioner himself had, in his reply dated 07.05.2012, accepted the liability of amount of subsidy, he could not be heard to say that such amount could not have been recovered from the petitioner. As with regard to second recovery on the head of the loan document (RIN DASTABEZ), he has submitted that said amount has not been realized by the Bank till date on account of misconduct or lapses in performance of duty of the petitioner and as such that amount has been kept in abeyance till its realization. He has also explained that the total amount payable to the petitioner, on the head of retirement benefits, is not Rs. 9,19,700/- but only Rs. 5,47,672/- as explained in Annexure-B to the counter affidavit. In this regard, he has also pointed out that there were certain advances which were to be recovered from the petitioner on the head of house building advances and overdraft payment received by the petitioner.

6. In the considered opinion of this Court, there will be no question of recovery of any amount by way of punishment in this case because whatever amount was sought to be recovered by way of punishment, the proceeding, as envisaged in the service rules, had to be conducted either before retirement of the petitioner or soon thereafter.

7. As noted above, the petitioner was given a show

cause notice, after more than three years of his retirement, asking him to make refund of the amount under the head of subsidy and loan document. The petitioner, within seven days of the receipt of such show cause notice, had filed his reply and, therefore, the minimum that the Bank ought to have done was to dispose of the said show cause reply of the petitioner by a reasoned order which could have enabled the petitioner to understand his liability.

8. Let it be noted that the petitioner was to be fairly informed to accept his liability towards subsidy and, therefore, the Bank could have recovered its amount of subsidy but then the Bank could not have made any recovery from the petitioner on the same on loan documents unless the advances of the petitioner was examined. The defence of the petitioner, in fact, was that said loan document had actually been executed prior to the period of his posting and therefore, he could not have been made liable for the same. In such a situation, the action of the Bank, in not paying the amount covered by the loan document and also making the petitioner subject to its recovery, is not correct either on fact or in law.

9. In view of the aforesaid discussions, this Court would direct the authorities of Bank to pay the petitioner's retirement benefit as admitted by the Bank to the tune of Rs.

5,47,672/- after deducting the amount of advance on the house building advance, overdraft drawn and the amount of subsidy. In other words, the petitioner will not be held responsible for refund of the amount of loan documents (RIN DASTABEZ).

10. It is also made clear that the claim of the petitioner on the other heads such as stagnation in increment and deputation allowances cannot be made subject matter of this writ application. It has to be confined only to the retirement benefit. The petitioner, therefore, may separately claim that amount before the appropriate authority/court as may be permissible in law.

11. Since, the Bank intends to recover the amount from the petitioner by charging interest either on the head of house building allowance or overdraft payment and subsidy, it will be also liable to pay the interest on the same rate on the remaining amount payable to the petitioner by way of retirement benefit. Such payment, therefore, to the petitioner on admissible amount of interest, must be made to him within a period of three months from the date of receipt of a copy of this order.

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

(Mihir Kumar Jha, J)

Sujit/-

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