IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 20813 of 2011

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Abhay Chandra Jha, Son of Late Nand Kishore Jha, resident of Mohalla- Azam Nagar, P.S. L.N.M.U. District- Darbhanga.

.... Petitioner/s

Versus

1. Punjab National Bank, through its Chairman, 7-Bhikhaji Cama Place, New Delhi-110066.
2. Senior Manager, H.R.D. Division, 7-Bhikhaji Cama Place, New Delhi-110066.
3. Manager, P.F. and Pension Fund Department, Rajendra Bhawan, Rajendra Place, New Delhi-1100.
4. Circle Head / A.G.M., Punjab National Bank, at G. M. Road No. P.O. Lal Bagh, Darbhanga.
5. Senior Manager, Punjab National Bank H.R.D. Section, G.M. Road, Circle Office, Darbhanga- 846004.
6. Branch Manager, Punjab National Bank, Madhepura, Branch and B/O Madhepura, District- Madhepura.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Kumar Jain, Advocate.
For the Respondent-Bank	:	Mr. Kumar Priya Ranjan, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 24-11-2015

Heard learned counsel for the parties.

The writ application has been filed seeking a direction upon the respondent-Bank to release all post retiral benefits in accordance with law along with statutory interest for delayed payment.

Learned counsel for the petitioner submits that he was compulsory retired under order dated 24.12.2010 from the bank service but his post retiral benefits which are due to him in accordance with law have not yet been paid. It is submitted that the order of compulsory retirement had only stipulated with major penalty under regulation 4 (h) of Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977 with further stipulation that the period for which the petitioner remained under suspension will not entitle him to any pay and allowances except the subsistence allowance already paid to him. Thus it is contended that action of the Bank by way of adjustment or withholding of amount due and payable to him is impermissible. Learned counsel submits that even with regard to the show cause admitted loss caused to the Bank under the information sought for by him under the Right to Information Act with regard to one particular amount, the stand of the Bank cannot be sustained. Learned counsel submits that prior to making such adjustment the petitioner was not granted any opportunity to explain or show cause which is violative of the principle of natural justice.

Learned counsel has relied upon a decision of the Hon'ble Supreme Court in the case of **State of Jharkhand vs. Jitendra Kumar Srivastava** reported in **2013 (3) PLJR (SC) 458** in which the proposition is that the payment of pension or gratuity or leave encashment is right to property and cannot be taken away without due process of law as per the provisions of Article 300 A of the Constitution of India. Learned counsel further submits that the petitioner with mala fide intention was made to superannuate just a few days prior to normal date of superannuation. Learned counsel for the respondent-Bank opposes the writ application and submits that till the time the order of compulsory retirement against the petitioner is not interfered with by the Court or competent authority, the natural consequences shall follow. It is submitted that the petitioner having been compulsory retired is one transaction and the consequences which will follow have to be seen in another perspective inasmuch as whatever dues remain against the petitioner on account of loan taken by him or otherwise have to be adjusted before the final payment is made to the petitioner and account settled. It is submitted that the petitioner has also given an undertaking that if any dues against him are found payable in the event of him not remaining in service, the same shall be adjusted from his post retiral benefits including pension, gratuity, commutation of pension and leave encashment and materials brought on record show that such adjustment is permissible as per the existing statutes/notifications/circulars/procedure of the Bank. Thus, it is submitted that since the petitioner caused loss on account of non-charging of interest on overdraft in various accounts, the same is loss caused to the Bank and adjustment made cannot be faulted. It is further submitted that as per the regulation the service of the petitioner has caused loss to the Bank and accordingly 2/3rd pension has been granted. It is submitted that with regard to the information sought by the petitioner under the Right to Information Act, the account for which the reply has been given by the Bank was one of the accounts maintained by the said consumer as he has another account. It is submitted that on the basis of instructions received the query with regard to a different account of the said consumer has been replied to. In that view of the matter he further submits that the said issue has to be adjudicated before the competent authority/forum and not in the present proceeding where the same are not under challenge and the petitioner having retired from a senior position in the Bank is well aware of the various circulars/statutes/procedure/practice of the Bank in such cases. Learned counsel submits that the question of violation of natural justice which *per se* cannot be faulted, is not applicable in the facts and circumstances of the present case, since the petitioner was the Branch Manager of the concerned branch of the Bank where the irregularities have been committed and he thus was aware of such happening and further he has not contested the matter on merits and rather raising only a technical bogey that a formal show cause was not issued to him even when the same may not be required. It is submitted that the purpose of show cause is basically to make a party aware that what is against him so that he is able to meet the charges and in the present case the petitioner was the Branch Manager of the concerned Bank at the relevant point of time and in fact one of the accounts from which such loss has been caused is that of his son. Learned counsel has relied upon a decision of the Hon'ble Supreme Court in the Case of **Karnataka Public Service Commission v. B. M. Vijaya Shankar** reported in **A.I.R. 1992 S.C. 952** in which it has been held that natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the Courts have been circumspect in extending it to situations where it would cause more injustice than justice. As far as the judgment of the Hon'ble Supreme Court in the case of **State of Jharkhand vs. Jitendra Kumar Srivastava** (Supra) relied upon by learned counsel for the petitioner, it is submitted that the issue involved in the present case is not with regard to whether the payment of pension or gratuity or leave encashment is right to property but only whether the same is permissible as in the present case there are provisions to such effect in the statutes/procedure/practice/circulars of the Bank of which the petitioner himself was fully aware and thus the said decision is of no help to the petitioner in the present case.

Having considered the rival contentions, this Court finds substance in the contention of learned counsel for the Bank. The basic issue of compulsory retirement of the petitioner not having been under challenge in the present proceeding and the same is still holding the ground, the action taken by the Bank, from the materials brought on record and the statutes/undertakings/circulars/practice/procedure, cannot be faulted. This Court also cannot hold that by not giving a formal show cause to the petitioner, any prejudice has been caused to him for whatever has been done was already known to the petitioner and are matters of record which have been disclosed by bringing all the facts on record in the present proceeding and the petitioner can very well move before the appropriate forum in accordance with law where he can contest such stand of the Bank on facts if the same are incorrect or erroneous.

Accordingly, this Court finds no ground to interfere in the issue involved in the present proceeding. The application stands disposed off.

However, the present order shall not prejudice the petitioner from agitating the action taken either with regard to the order of compulsory retirement dated 24.12.2010 or with regard to any fact which the petitioner finds to be erroneously relied upon and action taken by the respondent-Bank for the purposes of making payment of post retiral benefits.

(Ahsanuddin Amanullah, J.)

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