IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4179 of 2015

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Raj Bali Singh Son of Late Shyam Lal Singh resident of Village - Rampur Choaram, P.S. - Rampur Choaram, District - Arwal.

.... Petitioner/s

Versus

1. The State of Bihar through the Director General (D.G.P.) Bihar, Patna.
2. The D.I.G. Saran Pramandal Saran at Chapra.
3. The S.P. District - Siwan.
4. The District Provident Officer, District Siwani.
5. The Accountant General, Bihar, Patna, Beerchand Patel Path, Patna, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Prasad Singh

For the Respondent/s : Mr. Dhurjati Kr Prasad

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 30-04-2015

Heard learned counsel for the parties.

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

"1. ------ for directing and commanding to the respondents for make payment of entire retiral dues with statutory interest, as gratuity, Group insurance, leave encashment and provident fund to the petitioner which has not been paid to the petitioner and as well as for direction to the respondents for make payment of pension and arrears of pension with effect from the date of retirement from service with statutory interest, also direction to the respondents for make payment of entire other dues amount with statutory interest which has not been paid up till now to the petitioner."

Learned counsel for the petitioner has submitted that the petitioner who had joined the service in Bihar Police on 1.4.1971 and having been allowed to superannuate in the year 2011 cannot be deprived of his full retirement benefit. He has also submitted that the conviction of the petitioner in the year 2013 in no way could be used by the respondents in withholding payment of retirement benefit to the petitioner.

On the last occasion, noticing similar submission, this Court had directed the learned counsel for the State to file counter affidavit explaining as to whether the petitioner, after being convicted in a criminal case and sentenced to 7 years imprisonment, would be entitled for any retirement benefit and/or amount of contribution made by the petitioner towards his Provident Fund and Group Insurance prior to his made accused and taken into custody.

Though no counter affidavit has been filed by the learned counsel for the State in absence of instruction given to him by the respondents concerned, Mr. Dhurjati Kumar Prasad, has submitted that the petitioner will not be entitled for payment of pension and other retirement benefit in view of the provision of Rule 43(a) of the Bihar Pension Rules. He explains that in view of his future good conduct under Rule 43(a), he cannot claim pension and other retirement benefit as a matter of right.

There are two aspects of the matter which would meet the eyes of this Court. Firstly, there is complete lack of details in the pleadings of the writ application as to whether the petitioner after his retirement in the year 2011 was sanctioned and paid the full retirement benefit so as to invoke the concept of Rule 43(a) of the Bihar Pension Rules. Let it be noted that it is only in case of the pensioner who has already been sanctioned and paid full retirement benefit that his future good conduct become relevant for either withholding or withdrawing the amount of sanctioned amount of pension. In the present case, it is not clear as to whether the petitioner who had at the relevant point of time of retirement was definitely facing criminal prosecution was paid provisional pension or final pension. It is also not clear as to whether after the petitioner was convicted, any order has been passed by the respondents with regard to withholding or withdrawing any amount of pension.

In such a situation, this Court would direct the Director General of Police of the Government of Bihar to ensure that a conscious decision is taken with regard to payment of pension and gratuity to the petitioner.

Let such an exercise be completed within a period of three months from the date of receipt of this order.

Before parting with, this Court must make it clear that even if the petitioner, for a valid and justified reason, is denied the amount of pension and gratuity either in full or in apart, he will be entitled for refund of his amount of provident fund which was deducted from his salary during his service period and so will be the fate of the amount of group insurance. The contribution already made by the petitioner from his salary in no view of the matter can be withheld either on the head of provident fund or under the head of Group Insurance and, therefore, such amount with interest at the prescribed rate must be paid to the petitioner forthwith and, in any event, within a period of three months from the date of receipt/production of a copy of this order.

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

(Mihir Kumar Jha, J)

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