

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10641 of 2015

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Ishwari Dayal Singh S/o Late Ram Chandra Singh Resident of Mohalla Salimpur
Ahra, Police Station Kadamkuan, District Patna

.... Petitioner

Versus

1. Chairman cum Managing Director, Bihar State Power Holding Company Ltd., Patna
2. Deputy General Manager (Finance & T.B.), Bihar State Power Holding Company Limited, Patna
3. The General Manager cum Chief Engineer, Bhagalpur Electric Supply Area, Bhagalpur
4. The Administrative Officer, Bhagalpur Area, Electrical Supply Area, Bhagalpur
5. Jharkhand State Electricity Board, Ranchi

.... Respondents

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Appearance :

For the Petitioner : Mr. Harendra Kumar Tiwary, Advocate
For the BSPHCL : Mr. Anand Kumar Ojha, Advocate
For the JUVNL: Mr. Satyavrat Verma, Standing Counsel

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 29-07-2015

I have heard learned counsel for the petitioner, the Bihar State Power Holding Company Limited(hereinafter to be referred to as “BSPHCL”) and the Jharkhand Urja Vikas Nigam Limited(hereinafter to be referred to as “JUVNL”).

The petitioner who claims to have retired as Additional Electrical from the office of the of the Bihar State Electricity Board(hereinafter to be referred to as “BSEB”), Dumka Electric Supply Circle, now in the State of Jharkhand, on 31.01.2000, i.e., much before enforcement of the Bihar Reorganisation Act, 2000(hereinafter to be referred to as “the Act”), contends that all the

dues have been given, however, the difference of revision of pay calculated from 1996 and the arrears of leave salary for 67 days have not been paid to him, description of which has been given in paragraph 7 of the writ petition.

Initially, the stand of the BSPHCL was that the erstwhile BSEB and now the BSPHCL would not be liable to pay arrears of leave salary to the petitioner rather it would be the duty of the JUVNL for two reasons. Firstly that the leave salary does not come within the ambit of pensionary benefit as the decision of the Government of India as contained in Annexure C/3 has come holding that the pensionary benefit of such employees who have retired within the Jharkhand State but before coming into force of the Act has to be paid by the erstwhile BSEB and a copy of the decision of the BSEB dated 21.09.2007 has been appended as Annexure C/4 to demonstrate that such decision has been taken by the BSEB. Secondly, so far the payment of arrears of salary of the petitioner on account of its revision of pay is concerned, the liability for its payment is also of the JUVNL in view of the decision of the Central Government and the liability for payment of the pensionary benefit is of the BSEB.

However, Mr. Anand Kumar Ojha, learned counsel for the BSPHCL, fairly admits that in view of the decision of a Division Bench of this Court dated 02.12.2010 rendered in L.P.A. No. 579 of

2008(Arvind Kumar Singh and another v. Sri Sunil Kumar Choudhary and others) clearly holding that the leave encashment comes within the ambit of the pensionary benefit, the same has to be paid by the erstwhile BSEB.

In fact, the decision of the Single Bench of Jharkhand High Court has been quoted in the order of the Division Bench of this Court wherefrom it appears that the BSEB has even acknowledged its liability to pay the gratuity and unutilized leave salary which has been accepted by the Division Bench also.

In such a situation, Mr. Anand Kumar Ojha, learned counsel for the BSPHCL, clearly admits that so far the payment of dues of the amount of leave salary to the petitioner is concerned, the same would be paid by the BSPHCL.

Let the same be paid to the petitioner after necessary calculation by the BSPHCL within a period of eight weeks from the date of receipt/production of a copy of this order.

So far the payment of difference of salary of the petitioner in view of revision of pay scale is concerned, that cannot be a part of pensionary benefit as has been held by the Jharkhand High Court and accepted by a Division Bench of this Court in the aforesaid decision. The liability would be upon the JUVNL to pay such difference of salary on account of revision of pay to the petitioner.

Accordingly, the petitioner is directed to approach the Managing Director, JUVNL by filing a representation along with a copy of this order. In such case, let him take a decision in accordance with law and grant the benefit to the petitioner within a period of eight weeks from the date of its filing if he is found entitled.

But it is made clear that the petitioner's claim cannot be rejected on the ground of raising a controversy that the amount is to be paid either by the BSPHCL or JUVNL as that controversy has been set at rest by a Single Bench of the Jharkhand High Court and a Division Bench of this Court for which the State of Jharkhand as well as the JUVNL would be responsible. It is further made clear that the BSPHCL should also cooperate with the JUVNL if some records are required by them provided the same are in its custody.

This disposes of the writ petition.

(Dr. Ravi Ranjan, J)

SC/-

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