IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5253 of 2012

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1. The Union Of India Through The Director General Cum Secretary Department Of Posts, Dal Bhawan, New Delhi
2. The Chief Post Master General, Bihar Circle, Patna
3. The Director Accounts, Postal, Patna
4. The Post Master General, Northern Region, Muzaffarpur
5. The Director Of Postal Services Northern Region, O/O The Postal Master General, Northern Region, Muzaffarpur
6. Mahender Prasad Madan S/O Late Rameshwar Mandal R/O Chowk Chunapur Road, Madhubani, At Present Assistant, 'Superintendent' Of Posts (H.Q.), Purnia Division, District- Purnia

.... Petitioner/s

Versus

1. Saudagar Singh S/O Late Dhara Singh R/O Mohalla- Shivajee Colony, Police Station- Khajanchi Haat, District- Purnea

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Sanjay Kumar,ASG
For the Respondent/s : Mr. Jayant Kumar Karn

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 12-10-2015

The Union of India, in the Department of Posts, has filed this writ petition, challenging a part of the order of the Central Administrative Tribunal, Patna Bench, Patna, being order dated 28-6-2011 in O.A. No. 534 of 2009, whereby while upholding the order of imposition of minor punishment of recovery of substantial amount of money from the contesting sole respondent, who was the applicant before the Tribunal, the Tribunal held that deduction of Rs. 1,90,000/- from the gratuity amount payable to the contesting respondent was illegal. It further directed that the amount, so deducted, be refunded to the contesting respondent within two months.

2.We have heard learned counsel for the Union of India and learned counsel for the sole contesting respondent, who, as noted above, was the applicant before the Tribunal, and with their consent, this application is being disposed of at this stage itself.

3.It is not in dispute that the respondent was the Deputy Post Master, Purnea Head Office. On 14-2-2003 ,he made cash payment in respect of Kishan Vikash Patras amounting to Rs.5,30,000/- to a person. It was discovered then that these Kishan Vikash Patras were forged. A proceeding for imposition of minor penalty in terms of rule 11 of CCS(CCA) Rules was initiated under Rule 16 of the said Rules. The proceedings culminated in the order that the respondent was liable to compensate the Government the amount of Rs. 3,00,000/- . The respondent was still in service when the proceedings were concluded. The Disciplinary Authority ordered for recovery of the said amount from the pensionary benefits payable to the respondent. As the respondent was to superannuate on the next day, consequently adjustment of Rs.4,000/- was made as against his salary, Rs.1,06000/- from his leave encashment and Rs.1,90,000/- from his Death-cum-Retirement Gratuity. The respondent unsuccessfully challenged the same in appeal and revision, and that is how he came before the Tribunal. The Tribunal did not interfere with the order of minor punishment i.e., the order that the respondent was liable to pay the Government Rs.3,00,000/-. The Tribunal did not interfere with the recovery from his salary an amount of Rs.4,000/- or recovery from his leave encashment an amount of Rs.1,06000/- , but when it came to gratuity, the Tribunal held that in absence of an order passed by the President, the amount could not be recovered from the gratuity. The Union of India challenges this position with reference to rule 73(3) of the CCS Pension Rules.

4. Having considered the matter, in our view, the order of the Tribunal, to the extent under challenge ,cannot be sustained. That there was a liability on the part of the respondent to pay the amount to the Government, is not in dispute. The order of penalty dated 27-2-2004 having attained finality, that order was passed while the respondent was still in service. The result would be that upon retirement, that amount becomes an amount due and payable to the Government. No order was required to be passed afresh after his retirement, as he had already suffered the order in a disciplinary

proceeding prior to his superannuation. Thus, it being an amount due and payable at the time of his superannuation, in our view, rule 73(3) of CCS Pension Rules would squarely apply, which, after its amendment in 1988, permits adjustment of amount due from retirement gratuity. Rule 73(3) of CCS(Pension) Rules reads as follows:

> "(3) The dues as assessed under sub-rule(2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of retirement gratuity becoming payable to the Government servant on his retirement."

5. In our view, this is sufficient provision and authorisation to the Government to adjust the amount due from retirement gratuity.

6. It would be a different matter if the proceedings had not culminated prior to the respondent's superannuation. This being a minor punishment, therefore would require permission to be obtained to continue the proceedings after superannuation, and then only the President could have ordered for recovery of dues from the pensionary benefits. That is not the case in the present.

7. Thus, we find that the order of the Tribunal to the extent indicated above, is unsustainable in law and in fact. It is, accordingly, set aside, and it is held that the amount of Rs.1,90,000/- can be

recovered from the retirement gratuity payable to the respondent. The writ petition is , thus, disposed of.

(Navaniti Prasad Singh, J)

B.K.Roy/-

(Nilu Agrawal, J)

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