IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.295 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 4789 of 2010

==

1. The State of Bihar
2. The Chief Engineer, North, Bihar Water Development Corporation, Patna
3. The Executive Engineer, Tube Well Division, Bela, Muzaffarpur
4. The Executive Engineer, Tube Well Circle, Muzaffarpur
5. The Chief Engineer, North, Tube Well Division, Minor Water Resources Department, Muzaffarpur

.... Appellant/s

Versus

1. Chandra Mohan Singh Son of Late Kaushal Kishore Singh Resident of Village + P.S.- Sarraiya, District- Chapra, Saran.
2. The Accountant General, Bihar, Patna

.... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. P. N. Shahi, Sr. Advocate (AAG-10) Mr. Mritunjay Kumar, AC to AAG-10
For the Respondent/s	:	Mr. Shravan Kumar, Sr. Advocate Mr. Dinesh Maharaj, Advocate
For the Accountant General	:	Mr. Ranjan Kumar, Advocate

==

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 10-05-2016

The order dated 05.09.2012 passed by the learned Single Bench in C.W.J.C. No. 4789 of 2010 is the subject matter of challenge in the present Letters Patent Appeal.

The respondent, writ petitioner challenged the order dated 27.09.2008 whereby 90% of pension and 90% of gratuity was directed to be deducted permanently on account of his unsatisfactory service.

The writ petitioner joined as Tracer in the office of the Executive Engineer, Tubewell Drilling Division, Motihari on 05.05.1973. The stand of the writ petitioner is that he had applied for leave on 30.06.1994 till 31.03.1997 and gave his joining on 01.04.1997. The petitioner retired on attaining the age of superannuation on 30.04.2007 but soon thereafter on 01.06.2007, the petitioner was asked to explain his absence from duty from 05.05.1987 to 31.03.1997 as the said period was not verified in the service book. The petitioner was served with another show cause notice on 30.07.2008 as to why 100% of his pension be not deducted in terms of Rule 139(b) of the Rules. It is thereafter the impugned order was passed on 27.09.2008 directing deduction of 90% pension and 90% gratuity permanently. Such order was passed as the extraordinary leave for 3619 days from 05.05.1987 to 31.03.1997 was cancelled on 27.04.2007 just before attaining the age of superannuation by the writ petitioner.

The learned Single Bench found that if the writ petitioner was absent from duty, there was nothing which prevented the State from taking action against the petitioner. After considering the entire facts and circumstances of the case, the Court set aside the order reducing the pension and gratuity in light of Rule 139(b) of the Rules.

We have heard learned counsel for the parties and find that the order of the learned Single Judge setting aside the pension and gratuity by 90% and without giving opportunity to the State to proceed against the petitioner under Rule 43(b) of the Rules seems to be unjustified. Once the writ petitioner has been found to be absent from duty for a long period of time, the State cannot be prevented to take action after superannuation.

But the matter is pending since long; therefore, we have taken up the matter regarding imposition of penalty by this Court itself. Since, the writ petitioner was absent for a long period of time, we find that ends of justice will meet if the petitioner is paid 75% pension for the services rendered for 20 years of service. Thus for the period of absence deduction of 25% of pension for the period of 10 years will meet the ends of justice.

In view thereof, the order dated 27.09.2008 passed by the State Government is modified i.e., the petitioner shall be paid 75% of the pension for the period of 10 years from the date of his superannuation and thereafter 100% pension. However, 90% deduction on the amount of gratuity is not justified as per order of the Hon'ble Single Judge. Thus, the deduction out of the gratuity amount does not call for any interference as the same has been set aside by the learned Single Bench.

With the said directions and modifications, the appeal stands disposed off.

The appellant shall pay the modified amount of pension and its arrears and the full amount of gratuity to the writ petitioner within four weeks.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/Sujit
N.A.F.R.

U			