IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20387 of 2012

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Brij Bihari Singh son of Late Rameshwar Prasad Singh, Resident of 68-A, Patliputra Colony, Police Station -Patliputra, District - Patna

.... Petitioner/s

Versus

1. The Bihar State Financial Corporation, Fraser Road, Patna through its Chairman-Cum-Managing Director
2. Chairman-Cum-Managing Director, Bihar State Financial Corporation, Fraser Road, Patna
3. Manager (EPF), Bihar State Financial Corporation, Fraser Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manik Ved Sen, Advocate
	:	Mr. Subhash Chandra Bose, Advocate
For the B.S.F.C.	:	Mr. Raju Giri, Advocate
	:	Mr. Santosh Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-12-2016

Heard learned counsel for the petitioner and learned counsel for the Bihar State Financial Corporation.

2. Though the petitioner has made several prayers in the writ petition, learned counsel for the petitioner submits that in view of the assertions made in the counter affidavit filed on behalf of the respondent Bihar State Financial Corporation, for the present the petitioner would confine his prayer only in respect of payment of interest in the Employees Provident Fund Account for the period of delay in making the actual payment from the date it became due with liberty to agitate his claim in respect of payment of gratuity amount after the disciplinary authority takes final decision in the disciplinary proceeding against the petitioner as per direction of the Supreme Court.

3. Liberty is granted.

4. The petitioner, a Chemical Engineer joined services of the Corporation on 31st August, 1973 on the post of Technical Officer. He was promoted to the post of Senior Technical Officer and further to the post of Assistant General Manager. In the year 1983, a disciplinary proceeding was initiated against him in which he was awarded punishment of dismissal from service on the basis of enquiry report submitted by the enquiry officer in the year, 1994. The order of punishment was challenged by the petitioner by filing a writ petition before this Court, but the same was dismissed. Being aggrieved by the judgment passed by the writ court Letters Patent Appeal No.51 of 1998 was filed by the petitioner, which also got dismissed by a Division Bench of this Court. The judgment passed in L.P.A. No.51 of 1998 was assailed by the petitioner before the Supreme Court, vide Civil Appeal No. 1217 of 2011. The same was allowed, vide judgment dated 20th November, 2015. The operative part of the judgment of Supreme Court is as under:

> ***"16. After giving our anxious consideration in the matter, we are of the definite view that the procedure adopted by the respondents in removing the appellant from service is erroneous and suffers from serious discrimination and bias. Further, the Enquiry Officer conducted the enquiry without following the procedure and without giving sufficient opportunity to the delinquent to place his case. Enquiry is also vitiated in law.***
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> ***17. For the reasons aforesaid, we find that the appeal deserves to succeed. The orders passed by the Board of Directors and the impugned judgments passed by the High Court are liable to be set aside. The matter is, therefore, sent back to the Disciplinary Authority to proceed from the stage of the enquiry afresh and passed a reasoned order in accordance with law after giving full opportunity of hearing to the appellant. Needless to say if the appellant is aggrieved by the final order that may be passed by the Disciplinary Authority, he shall have a right to appeal before the appellant authority."***

5. It would be pertinent to note here that prior to the decision of the Supreme Court in Civil Appeal No.1217 of 2011, the petitioner retired from service on attaining the age of superannuation in the year, 2010.

6. It is contended by the learned counsel for the petitioner that Employees Provident Fund amount was paid to the petitioner on 3oth June, 2011, but the interest was calculated only upto 27th August, 2008. It is submitted that the amount lying in the Employees Provident Fund Account managed by the trust of Bihar State Financial Corporation earned interest yearly till the date of payment. The Employees Provident Fund Regulation does not require any application for payment of the amount lying in the Employees Provident Fund Account. The amount becomes payable to an employee immediately after the master and servant relationship of an employee comes to an end on attaining the age of superannuation. It is submitted that there is no justifiable reason for denial of interest over the amount payable to the petitioner under the head Employees Provident Fund Account from 27th August, 2008 to 30th June, 2011.

7. In support of the above contention, the petitioner has placed reliance on the order dated 4.7.2006 passed by this Court in the matter of ***Ram Naresh Pandey vs. Bihar State Financial Corporation, Patna and Others (C.W.J.C. No.8613 of 2005)*** and the order dated 21.11.2005 in the matter of ***Md. Nafis vs. The Bihar State Financial Corporation and Others (C.W.J.C. No.9795 of 2004)*** wherein identical issue was involved and this Court had directed for payment of statutory interest on the amount of credit lying in the Provident Fund Account of the respective petitioners of these cases until payment of the same.

8. Per contra, learned counsel for the Bihar State Financial Corporation has submitted that the interest on Employees Provident Fund is payable upto the date on which member's subscription of an employee towards Employees Provident Fund along with Corporation's contribution is paid. He has submitted that in the instant case the member's subscription and Corporation's contribution were paid to the petitioner in the shape of adjustment against Corporation dues on 27th August, 2008 and no further interest on Employees Provident Fund accrued. On query made by the Court in respect of Annexure-3 to the writ petition as also Annexure-R/1 to the counter affidavit, learned counsel for the respondent-Corporation admits that after adjustment of Corporation's dues of Rs.4,35,352.38/-, Rs. 3,70,,043.62/- was paid to the petitioner on 30th June, 2011 by cheque.

9. I have heard learned counsel for the parties and perused the records.

10. I find substance in the arguments advanced by the learned counsel for the petitioner. There is no dispute regarding the date of payment of balance amount of Employees Provident Fund Account. As stated above, Rs.3,70,043.62/- was paid to the petitioner on 30th June, 20111 was made only upto 27th August, 2008.

11. Apparently, the amount lying in the Employees Provident Fund Account managed by the trust of Bihar State Financial Corporation earned interest till the date of its payment to the petitioner.

12. In order to appreciate the issue involved in the present case, it would be proper to extract Regulation 17 of the Bihar State Financial Corporation Employers Provident Fund Regulations, which reads as under:

> ***"17. (1) When the sum standing to the credit of a member in the fund becomes payable, if the administrators so direct, where the member has been dismissed from the employment of the Corporation for misconduct, fraud or gross negligence, or where he has resigned such employment within five years of the commencement thereof, payment of the whole or any part of the Corporation's contributions and interest accrued on such contributions credited to the individual account of the member from such sum may be withheld and the amount so withheld shall lapse to the fund.***
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> ***(2) Where the member has been dismissed from employment or where he has resigned such employment in the circumstances specified in Clause (1) and the Administrators do not make a***

direction under that clause, thereby, if the Board of Director so directs, be deducted from the sum standing to the credit of the member in the fund in his individual account and paid to the Corporation the whole or any part of such contributions and interest.

(3) Where the member has been dismissed from employment or where he has resigned such employment in the circumstances specified in clause (1) and the Administrators make a direction under that clause, there may, if the Board of Director so directs, be deducted from the sum standing to the credit of the member in the fund in his individual account and paid to the Corporation the whole or any part of such contributions and interest which have not lapsed to the fund under clause (1).

(4) When the sum standing to the credit of a member in the fund becomes payable there may, if the Board of Directors so directs, be deducted therefrom and paid to the Corporation any amount due under a liability incurred by the member to the Corporation, but not exceeding in any case the total amount of such contributions and interest which has not lapsed to the fund under clause (1) and which has not been deducted under clause (2) and (3).

(5) The Administrators shall be the sole judges of the sufficiency of the reason or reasons for

withholding payment under clause (1) and the Board of Directors shall be sole judges for making an order of deduction under clauses (2), (3) and (4).

(6) The amount due under the liability referred to in clause (4) shall be determined by the Board of Directors.

13. A close look to the Regulation 17 would make it clear that the Administrator and the Board of Directors are authorized to direct withholding and deduction respectively by Clause 17. However, none of them has exercised such power in the present case. Under such circumstances, there was no reason for the respondent-Corporation to deny the payment of statutory interest as applicable to such fund. It is not disputed that the amount earned interest till it remained to the credit of the petitioner in his Provident Fund Account.

14. Hence, I do not find any rational as to why interest accrued in Employees Provident Fund of the petitioner would not be paid to the petitioner after 27th August, 2008. The two orders of this Court on which the petitioner have placed reliance also support the contention of the petitioner.

15. Under the circumstances, the writ petition is allowed with a direction upon the respondents - Bihar State Financial Corporation to pay the petitioner statutory interest on the amount accrued lying in his Provident Fund Account until payment of the same within a period of two months from the date of production of a copy of the order before the respondent no.2.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	…….
Uploading Date	07.01.2017
Transmission Date	