IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17722 of 2014

==

1. The Union of India through the Zonal Manager, Postal Department, Zonal Office, Gandhi Maidan, Patna
2. The Zonal Manager, Postal Department, Zonal Office, Gandhi Maidan, Patna
3. The Senior Superintendent of Post Offices, Patna Division, Patna

.... Petitioners

Versus

Inradeo Prasad Singh, Son of late Sheo Baran Prasad Singh, resident of village - Bhagwatipur Karman, P.S. Pandarak, District - Patna

.... Respondent

==

Appearance :

For the Petitioners : Mr. S.D.Sanjay, A.S.G.
Mr. Rakesh Kumar Sinha, C.G.C.

For the Respondent : Mr. Amar Nath Jha, Advocate.

==

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

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 28-07-2016

The challenge in the present writ application is to an order passed by the learned Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) on 27th of April, 2012 in O.A. No. 204 of 2011, whereby an Original Application filed by the respondent (hereinafter referred to as “the applicant”) for payment of pension, Leave Encashment and gratuity was disposed of with a direction that if the judicial proceedings are not concluded within three months from the date of communication of the order impugned, the petitioners shall release the entire retiral benefits with interest at the rate of 8 per cent *per annum* from the date of retirement.

WEB COPY NOT OFFICIAL

2. A perusal of the record shows that the applicant is facing a trial by Central Bureau of Investigation, which trial is pending in the Court of Special Judicial Magistrate, Patna.

3. The applicant attained the age of superannuation on 30th of November, 2003. The provisional pension was sanctioned on 28th of November, 2003. Earlier, the applicant filed an Original Application before the Tribunal to claim the retiral benefits in which the Tribunal directed that his representation be decided by passing an appropriate order on 17th of July, 2009. In compliance of the directions of the Tribunal, an order was passed on 20th of April, 2010 that gratuity has been withheld on account of pending judicial proceedings.

4. The applicant has sought the retiral benefits relying upon an order of the Delhi Bench of the Tribunal in the case of S.C. Srivastava Vs. Chief Secretary, Delhi Administration and others (Case No. 372 of 1992) and also on the order passed by this Court in C.W.J.C. No. 10827 of 1999 (Shamsher Bahadur Sinha Vs. The State of Bihar and others) to contend that pending judicial proceedings his pension and other retiral benefits cannot be withheld. During course of argument, the applicant referred to a judgment of this Court reported as Bajrang Deo Narain Sinha Vs. The State of Bihar & Ors., 1999 (3) PLJR 949.

5. The Tribunal held that the referred case Shamsher Bahadur Sinha's case (Supra) does not deal with Rule 69 of the Central Civil Services Pension Rules, 1972 (hereinafter referred to as "the CCS Rules") which permits withholding of retiral benefits. But after returning such finding, a direction was given that if the judicial proceedings are not concluded within three months from the date of communication of the order impugned, the petitioners shall release the entire retiral benefits as asked for in para 8[b] of the Original Application with an interest at the rate of 8 per cent *per annum* from the date of retirement.

6. Rule 69 of the Rules contemplates that the provisional pension equivalent to maximum pension can be paid to the Government employee till the final orders are passed by the competent authority on conclusion of the departmental or judicial proceedings. Sub-rule (1)(c) prohibits that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

7. In view of Rule 69 of the Rules, the applicant has been paid provisional pension whereas the gratuity amount stands withheld.

8. The judgment of this Court in Shamsher Bahadu Sinha (supra) pertains to withholding of pension in terms of Rule 43

of the Bihar Pension Rules, 1950.

9. The Division Bench in Bajrang Deo Narain Sinha's case (supra) was considering a situation where a criminal trial was pending. The learned Single Bench ordered withholding of 10 per cent of pension, gratuity and Leave Encashment pending criminal trial. It is in these circumstances, the Division Bench said that pension and/or gratuity cannot be withheld till such time as an order is passed under Rule 43(b) of the Bihar Pension Rules. Similarly, the leave encashment dues also cannot be withheld since that is in lieu of unutilized leave and therefore partakes the character of salary. The relevant extract of the said judgment reads as under:-

> "6. We are, therefore, of the view that the pensionary dues payable to the appellant including gratuity, which is also pension within the meaning of the Bihar Pension Rules, cannot be withheld till such time as an order is passed under Rule 43(b) of the Bihar Pension Rules. Similarly, the leave encashment dues also cannot be withheld since that is paid in lieu of unutilized leave and therefore partakes the character of salary."

10. Said judgment does not support the argument raised by the learned counsel for the applicant as firstly it relates to Rule 43(b) of the Bihar Pension Rules and secondly it says that amount of pension and gratuity can be withheld after passing an appropriate order. In the present case there is specific order of withholding of amount of gratuity.

11. Recently, this Court in Vijay Kumar Mishra Vs. The State of Bihar & Os. (L.P.A. No. 145 of 2014 decided on 30.06.2016) has considered the Supreme Court judgment reported as *State of Jharkhand vs. Jitendra Kumar Srivastava, (2013) 12 SCC 210* and Rule 43 of the Bihar Pension Rules. It was held that the expression 'pension' in such Rules include gratuity as has been held in Bajrang Deo Narain Sinha's case (supra) and that after the amendment of Rule 43 of the Bihar Pension Rules by notification dated 31st of July, 1980, there is a specific condition of withholding of pension and gratuity.

12. The Bihar Pension Rules have no applicability to the facts of the present case as the applicant is not an employee of the Bihar State but is a Central Government employee and is governed by the CCS Rules. Rule 69 of the CCS Rules permits the competent authority to withhold gratuity though payment of provisional pension is permitted. The short order passed by the Delhi Bench of the Tribunal has made no reference of Rule 69 of the CCS Rules. Therefore, the said order is not the correct enunciation of law.

13. In view of the specific terms of Rule 69 of the CCS Rules, we find that the amount of gratuity can be withheld.

14. However, in respect of direction to conclude the judicial proceedings, the learned counsel for the petitioners argued

that the matter is pending before the Special Judicial Magistrate on which the petitioner has no administrative control.

15. Since the trial is pending before a Judicial Court, over which the petitioners have no control, therefore, such a direction cannot be issued which is not practical to be complied with. The petitioners have no control over the functioning of Judicial Courts, therefore, there could not be any direction which is impossible to comply. Therefore, the said part of the order is set aside.

16. Consequently, the writ application is allowed, the order passed by the Tribunal is set aside and the Original Application is dismissed.

(Hemant Gupta, J)

Ahsanuddin Amanullah, J I agree.

(Ahsanuddin Amanullah, J)

P.K.P.
N.A.F.R.

U			