IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1738 of 2015

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Md. Amjad Husain, son of Md. Ramjan Ali, resident of village-Minapur, P.S.-Hazipur, District-Vaishali at Hazipur.

.... Petitioner

Versus

1. The State of Bihar
2. The Director, Primary Education, Govt. of Bihar, Patna
3. The District Programme Officer (Eastablishment), Vaishali.
4. The District Treasury Officer, Vaishali.
5. The Accountant General, Birchand Patel Marg, Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak, Advocate

For the Respondent-State : Mr. Anil Kumar Sinha, GP-26

For the Respondent-AG : Mr. Ram Yash Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-12-2016

At the outset, it is submitted by the learned counsel for the petitioner that during pendency of the writ application, the payment of pension and commutation of pension has been made to the petitioner, but the gratuity amount has not been paid till date. He has contended that the authority slip for payment of gratuity has already issued in favour of the petitioner on 2nd May, 2014 by the Assistant Accountant General, but the same is withheld by the respondents even without initiating any disciplinary proceeding against the petitioner.

2. On the other hand, learned counsel for the State has submitted that the amount of gratuity has not been paid to the petitioner because he is involved in financial irregularities and a decision in regard to payment of the amount of gratuity to the petitioner would be taken after receiving order from the Director, Primary Education, Bihar, Patna.

3. In reply, learned counsel for the petitioner submits that while in service, no disciplinary proceeding was initiated against the petitioner. However, a show cause was asked from him, which was immediately replied by the petitioner and vide impugned order dated 14.11.2014, as contained in Annexure-1 to the present writ petition, the District Programme Officer (Establishment), Vaishali dropped the disciplinary proceeding, but, while dropping the proceeding, he has ordered that the payment of gratuity amount would be made to the petitioner only after the order of the Director, Primary Education, Bihar, Patna in some other identical matters, which are pending before him. He has contended that any proceeding in respect of any other employee, which may be pending before the Director, Primary Education, would have no relevance so far as the claim of the petitioner for payment of the

amount of gratuity is concerned.

4. The Accountant General has also filed a counter affidavit in the present matter.

5. Learned counsel for the Accountant General has submitted that after receiving sanction from the Administrative Department, the Accountant General has already authorized pension, gratuity and commutation of pension in favour of the petitioner vide letter No.486 dated 29.03.2014. He has submitted that subsequently the revised pension and gratuity in respect of the petitioner has also been authorized vide letter No. 14 dated 22.09.2014 by the Accountant General in the light of sanction of the Administrative Department.

6. I have heard learned counsel for the parties and perused the record.

7. Admittedly, neither any criminal case nor any departmental proceeding is pending against the petitioner. The office order dated 14.11.2014 as contained in Annexure-1 clearly demonstrates that the proceeding against the petitioner has been dropped with condition that the amount of gratuity would be paid to the petitioner after decision of the Director, Primary Education in some other similar matters in respect of some other employees.

8. In the opinion of this Court, such kind of order

cannot be sustained in law, especially when the submission of the counsel for the petitioner that the proceeding has been dropped has not been contradicted by the learned counsel for the State.

9. The petitioner was a Headmaster in a Middle School and he retired from service on attaining the age of superannuation on 30.04.2013. Since then his gratuity amount has illegally been withheld by the respondents.

10. It is well settled that gratuity is hard-earned benefit of an employee and such benefit cannot be taken away from a government employee without adopting due process of law. The Administrative Department has already sanctioned the pension of the petitioner after his retirement in March, 2014. It has also sanctioned the revised gratuity in respect of the petitioner on 22nd September, 2014. Under such circumstances, the action of the District Programme Officer (Establishment), Vaishali in withholding the payment of gratuity in absence of any pending proceeding is a glaring example of executive arbitrariness and administrative highhandedness.

11. Accordingly, the impugned office order dated 14.11.2014 as contained in Annexure-1 to the present writ application is quashed. The respondents are directed to pay the amount of gratuity to the petitioner as early as possible, but not later

than two months from today. In case, the respondents fail to pay the amount of gratuity to the petitioner within two months from today, the admissible amount of gratuity would earn interest at the rate of 9% per annum from the date it became due till the date of its actual payment.

12. With the aforesaid observation and direction, the writ application is allowed. However, there shall be no order as to costs.

(Ashwani Kumar Singh, J)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.12.2016
Transmission Date	NA