

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13560 of 2012

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1. Kedar Nath Pandey S/O Late Dashrath Pandey R/O Rauja Road,
Company Sarai Behind Bal Vikash School, Police Station- Sasaram Town,
District- Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Engineer, Water Resources Department, Bhagalpur
3. The Superintending Engineer Ganga Pump Canal Circle, Bhagalpur
4. The Executive Engineer (Mechanical) Irrigation Electrical-Cum-Mechanical Division, Balmi, Karbighiya, Patna
5. The Executive Engineer Ganga Pump Canal Division, Kahalgaon, Bhagalpur
6. The Assistant Engineer Irrigation Electrical-Cum-Mechanical Division, Balmi, Karbighiya, Patna
7. The Sub Divisional Officer-Cum-Assistant Engineer Ganga Pump Canal Sub Division-4, Bateshwar Asthan Kahalgaon, Now Renamed As Irrigation Electrical-Cum-Mechanical Division, At Present Situated At Walmi, Karbigahiya, Patna
8. The Sub Divisional Officer-Cum-Assistant Engineer Ganga Pump Canal, Sub Division-3, Kahalgaon, District- Bhagalpur
9. Teh Accountant General, Bihar, Beerchand Patel Path, Patna
10. The Assistant Account Officer/Section Officer Office Of The Accountant General (A &E), Bihar, Patna
11. The Treasury Officer, Sasaram Treasury

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh, Advocate
For the Respondent/s : Mr. Ajay Bihari Sinha, GA-8
With Mr. Neeraj Raj, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

5 11-08-2016

Heard learned counsel for the parties.

2. The petitioner was working as Junior Engineer in the office of Ganga Pump Canal, Division-I, Sub-Division-IV, Bateshwar Asthan, Kahalgaon, Bhagalpur, wherefrom he retired after attaining the age of superannuation with effect

from 31.01.2008.

3. The present application has been filed seeking quashing of the letter, as contained in Memo No. 1073, dated 10.12.2011, addressed to the Treasury Officer, Sasaram Treasury, issued by the Executive Engineer, (Mechanical) Irrigation Electrical-cum-Mechanical Division, Walmi, Karbighiya, Patna, whereby recovery/adjustment of an amount to the tune of Rs. 23, 92,933/- has been decided to be made from the petitioner.

4. The petitioner had earlier approached this Court by filing an application under Article 226 of the Constitution of India, which had given rise to CWJC No. 3286 of 2009, and was disposed of by an order, dated 18.03.2009, with the following direction:-

"There is no difficulty for this Court to hold that the petitioner is entitled for certain retirement benefits and merely because no dues certificate is not being issued, that cannot be a ground to kept the admitted retirement benefits pending for an indefinite period. This Court would notice that the Government has already issued an order in the month of January, 2008 (Annexure-5) directing the Executive Engineer of Ganga Pump Canal division, Kahalgaon, Bhagalpur for making payment of the admitted retirement dues of the petitioner.

In that view of the matter, this Court would expect the competent authority to take a final decision as with regard to payment each and every admitted retirement dues within a period of three months and also make payment thereof in the next one month. If any of retirement benefit is not found payable, the respondents should be under obligation to disclose reasons within the same period.

As with regard to other part of the relief, i.e., promotion (A.C.P.) and/or arrears of salary,



the petitioner will always be at liberty to move the appropriate forum."

5. Alleging non-compliance of the said order, the petitioner filed contempt application, which gave rise to MJC No. 556 of 2010. In the contempt proceeding, in the light of the stand taken on behalf of the respondents State of Bihar, in their counter affidavit in paragraphs 17 and 18, this Court disposed of the contempt application with following observations:-

" The plea of the learned counsel for the petitioner that he may be given opportunity to verify the actual payment claimed by the Opposite parties in the show cause reply as quoted above, in the circumstances, seems to be wholly misplaced, inasmuch as, they are supported by the documents contained in Annexures 4,5,6 & 7 respectively.

This contempt application, therefore, is dismissed as having become infructuous but, it is made clear that if any of the claim of the Opposite parties in paragraph no. 17 of the show-cause reply is found to be incorrect, it will be always open for the petitioner to file an application for revival of this contempt application."

6. The averments made in paragraphs 17 and 18 of the show cause reply read as follows:-

"17. That it is submitted that from the following table it is clear that up till now the petitioner has already been paid the following retiral benefits:-

Sl No.	Type of payment /Name of Schemes	Period/Bill number and year	Amount paid in Rupees	Remarks Pension @ Rs. 4,185/-
1.	Provisional pension 90% of Regular Pension @ Rs.4,185/- per month	From 2/08 to 01/11 by different bills	2,10,923.00(Rupees two lacs ten thousand & thirty four) only by different bank draft.	Payment with existing Dearness Allowance
2.	Group	By bill	1,13,094.00 (Rupees one	Annexure-4

	Insurance Scheme with interest	no.71/07-08	lac thirteen thousand and ninety four) only by Bank draft.	
3.	Cash payment for Unutilized Earned Leave	By Bill no. 07/10-11	1,36,710.00 (Rupees one lakh thirty six thousand and seven hundred ten) only by Bank Draft	Annexure-5
4.	Provisional Gratuity, 90% of Regular Gratuity	By bill no. 17/10-11	2,03,015.00 (Rupees two lakhs three thousand and fifteen) only by Bank Draft	Annexure-6
5.	Final Payment of GPF with interest	By bill no. 25/10-11	4,38,639/-(Rupees four lakhs thirty eight thousand and six hundred thirty nine) only by Bank draft	Annexure-7

18. That it is submitted that the rest outstanding arrear of the petitioner such as Assured Career Progression and different of pay arrear amounting to Rs. 4.50 lacs (approx) will be paid till July, 2011 after receiving allotment of next financial year which normally came in June-July."

7. It further appears that in the light of the observation made by this Court in the order, dated 23.09.2011, passed in MJC No. 556 of 2010, an application for revival of contempt proceeding was filed, which was allowed to be withdrawn by order, dated 20.06.2012, with a liberty to the petitioner to file a fresh writ application with regard to subsequent cause of action.

8. This is the background in which the present writ application has been filed seeking quashing of the impugned communication, which has the effect of withholding the entire pension, gratuity and other retiral dues, which would have been otherwise payable to the petitioner.

9. Justifying the issuance of the said communication for recovery/adjustment of the amount



mentioned therein, in the counter affidavit filed on behalf of the Respondents State of Bihar, it has been asserted that the petitioner had not physically handed over charge of the articles under his possession, which was required to be done upon his retirement, to one Kripa Narayan Ram, Junior Engineer, Ganga Pump Canal Sub-Division no.3, and accordingly, a total sum to the tune of Rs. 19,02,494/- on account of cost price of goods and other articles including an advance of Rs. 22,000/- was assessed as recoverable from the petitioner or adjustable against different heads of his post retiral dues.

10. Learned counsel appearing on behalf of the petitioner has made a very short submission challenging the impugned letter. He has submitted, referring to Rule 43 of the Bihar Pension Rules that no part of pension or gratuity could have been adjusted or withheld without following the procedure contained therein. He has submitted that no proceeding at all, was initiated as contemplated under Rule 43(b) of the Bihar Pension Rules. He has further submitted that before issuance of the impugned communication, even a show cause notice was not given to the petitioner to explain his position in this regard. According to him, the decision to recover the said amount or to adjust petitioner's entitlements against post retiral dues is apparently unilateral and, therefore, not sustainable being in breach of the



principles of natural justice. He has also submitted that no such plea was taken on behalf of the respondents during the earlier proceedings, i.e., neither in CWJC No. 3268 of 2009 nor during the pendency of MJC No. 556 of 2010. Referring to the statements made in show cause reply in MJC No. 556 of 2010 filed by the respondents, he submits that the respondents as a matter of fact, had agreed for clearing the entire retiral dues which was admissible to the petitioner including Assured Career Progression and difference of pay arrears amounting to Rs. 4.50 lacs. He has, accordingly, submitted that the said communication has been issued only to harass the petitioner without any valid basis.

11. Learned counsel appearing on behalf of the Respondents State of Bihar, on the other hand, has submitted that this is not in dispute that there are materials available on record to suggest that the petitioner had not handed over charge of the articles, which were in his possession at the time of his retirement, to the next incumbent. In that background, the Department assessed the value of the articles, which were in possession of the petitioner, and were not handed over to his successor. He has, accordingly, submitted that there is justification in decision of the State Government for recovery/adjustment of the amount in question.

12. There is no dispute about the fact that before



issuance of the impugned letter in question, no proceeding, as contemplated under Rule 43(b) of the Bihar Pension Rules, was undertaken. This is also not in dispute that the petitioner was not given any opportunity to explain his position with respect to handing over charge of the articles which were in his possession on the date of his retirement, to his successor. The action of the State respondents is apparently in breach of the principles of natural justice. The said action is also arbitrary and unilateral and in violation of Articles 14 and 16 of the Constitution of India.

13. Accordingly, the letter dated 10.12.2011, impugned in the present writ application is quashed. Since admittedly no proceeding was initiated against the petitioner at any point of time, within the period of four years from the date of petitioner's superannuation, no proceeding under Rule 43(b) of the Bihar Pension Rules is permissible.

14. The Respondents are, accordingly, directed to ensure payment of post retiral dues to the petitioner within a period of four months from the date of receipt/production of a copy of this order.

15. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

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