IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2772 of 2015

==

1. The Union of India through Director General-cum-Secretary, Department of Posts, Dak Bhawan, New Delhi
2. The Chief Post Master General, Bihar Circle, Patna
3. The Director, Accounts (Postal), Patna GPO Complex, Patna
4. The Post Master General, Northern Region, Muzaffarpur
5. The Director of Postal Services, O/o the Chief Post Master General, Northern Region, Muzaffarpur
6. The Superintendent of Post Offices, Siwan Division, Siwan

.... Petitioner/s

Versus

Raghuwar Singh Son of Late Ram Narayan Singh, resident of village- Pachalakhi, Police Station- Nautan, District- Siwan

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar(ASG)
For the Respondent/s : Mr. Hemant Kumar Karn &
Mr. Jayant Kumar Karn, Advocates

==

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 11-01-2016

The Union of India in the Department of Post has filed this writ petition challenging the judgment and order dated 10.04.2012 passed in O.A. No. 865 of 2010 by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as "the Tribunal).

2. The applicant before the Tribunal, Raghuwar Singh, who is respondent herein, has appeared and with consent of both sides, this writ petition has been heard and is being disposed of at this

stage itself.

3. The dispute is with regard to the remuneration payable to the private respondent/ the applicant before the Tribunal for the period of overstayal beyond the age of superannuation and payment of *ex gratia* gratuity. The applicant before the Tribunal was working as GDSPM, now called as G.D.S. (Gramin Dak Seva). It appears that at the time of his engagement, he had given in his own handwriting his date of birth as 20.07.1940 and gradation list and other documents prepared on basis thereof accepted this as his date of birth, but with passage of time, these documents were lost by the Department. The applicant was asked to furnish a fresh certificate in respect of his date of birth. He, this time filed certificate showing his date of birth as 15.01.1945. By virtue of this change, he worked beyond his normal date of superannuation for about one year and nine months. When the original gradation list was found and it was discovered that he ought to have superannuated earlier, he did not contest this position and accepted his superannuation after one year and nine months of extra service. The department then sought to deny him his *ex gratia* gratuity and asked him to refund the payment made for the extended period of service. The Tribunal allowed the original application in view of the rules which provided that the extra period of work beyond superannuation could be regularized and for the extra period no *ex*

gratia gratuity would be paid.

4. In sum and substance, we would not interfere with the judgment and order of the Tribunal, though for the slightly different reason. So far as the gratuity is concerned, it is something, that is earned during the service tenure and payable at the time of superannuation. It is already earned, therefore, the gratuity would be payable to the applicant for the period upto his correct date of superannuation based on his date of birth of the year 1940. The extended period cannot be counted for any purpose. That is one aspect. The Department apparently is asking the applicant to refund what was paid to him for the extended period. We do not think, they are correct. It may be that the employee misled the authority into permitting him to work for a longer period than he was required to work, but the fact is that he has nevertheless worked and the Department has been benefited from his work. It is elementary that no service is gratuitous. If the applicant has worked and the Department has taken work, the Department would be required to compensate the applicant for the work done by him. It would be unjust and improper on the part of the Department to say that even though the applicant has worked and consequently the Department got benefited from that work, still because the work was unauthorizedly executed by the applicant beyond the period of superannuation, the Department would

reap the harvest, but not share the cost. At the cost of repetition, service not being gratuitous, the applicant has to be compensated and the salary paid for the period, he worked cannot be sought to be recovered. We may, in this connection, refer to the case of ***State of Bihar Vrs. Narasimha Sundram, since reported in AIR 1994 S.C. 599***, wherein the Apex Court went to the extent of directing payment of salary for the extended period, which got extended by reason of suppression by the employees. Thus, any money that has been paid to the applicant cannot be sought to be refunded and the gratuity which is separately earned has to be paid. In case, any money in respect of overstayal has not been paid, we would direct the Department to pay the same, including the gratuity and insurance.

5. With the aforesaid observation and direction, this writ petition is disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

AFR
Arjun/ Trivedi

U		T	