

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7266 of 2015

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Shiva Shankar Roy son of Late Baidyanath Roy, Resident of A/15, Housing Colony, Lohianagar, Patna, P.S. Kankarbagh, Town and District- Patna. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary Department of Health, Govt. of Bihar, Patna.
 2. Joint Secretary, Department of Health, Govt. of Bihar, Patna.
 3. Additional Secretary, Department of Health, Govt. of Bihar, Patna.
 4. Deputy Secretary, Department of Health, Govt. of Bihar, Patna.
 5. Under Secretary, Department of Health, Govt. of Bihar, Patna.
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Shiv Kumar, Adv.
For the State : Mr. Sunil Kumar Mandal, S.C.-3
: Mr. Bipin Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 08-08-2016

Heard learned counsels for the parties.

This application has been filed seeking quashing of a communication dated 14.10.2004 issued by the Health Department, Government of Bihar whereby it has been decided to adjust an amount of Rs. 64,140/- from the petitioner's admissible amount of gratuity. The said amount of gratuity has, in fact, been adjusted from the amount of gratuity payable to the petitioner. The decision to deduct the amount was taken on the ground of excess payment having been made to the petitioner against salary, consequent upon incorrect fixation of his pay.

The petitioner retired as Social Scientist after attaining the age of superannuation w.e.f. 31.07.2002. He has been paid his all post-retiral dues. It is his grievance that the

amount has been paid belatedly and, therefore, he is entitled for interest on the amounts of post-retiral dues from the date when dues became payable till the date of actual payment.

It appears that the petitioner had earlier approached this Court by filing a writ application vide C.W.J.C. No. 17688 of 2011 which came to be disposed of by order dated 04.04.2012 with a direction to the respondents to consider the petitioner's claim in accordance with the relevant rules. This Court, while passing the order dated 04.04.2012 did not go into the merit of the petitioner's claim. Alleging non-compliance of this Court's order dated 04.04.2012, the petitioner had filed a contempt application which gave rise to MJC No. 4243 of 2012 and was disposed of by order dated 27.11.2013 in following terms:-

“Contempt Application stands disposed off in view of the subsequent developments and the steps taken by the respondents for payment of the various dues to the petitioner.

So far as the deduction is concerned, the petitioner may pursue the matter in light of the communication which he has made with the authorities.”

From the materials on record, it transpires that the petitioner retired in the year 2002 and he had approached this Court by filing C.W.J.C. No. 17688 of 2011 in the year 2011. It also appears that the petitioner was granted provisional pension before finalization of his final pension and gratuity.

Learned counsel for the petitioner has placed

reliance on a Supreme Court decision in case of S.K. Dua vs. State of Haryana & Anr reported in 2008(3) SCC 44 to buttress his contention that the petitioner is entitled for interest on the delayed payment and its retiral dues.

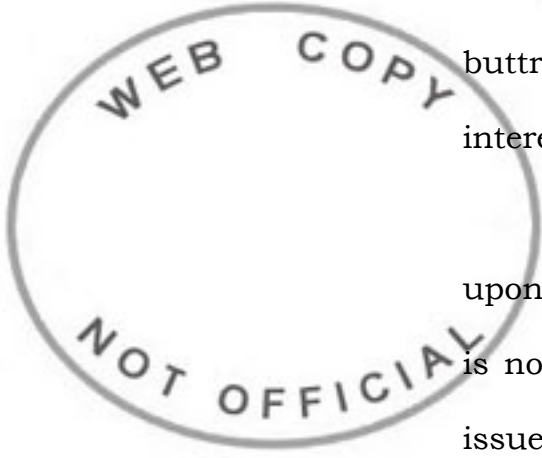
So far as petitioner's claim for interest consequent upon delayed payment of post-retiral dues is concerned, there is no such statutory provision. There is, however, a circular issued by the State Government under which 5% interest may be allowed by the competent authority on delayed payment of gratuity.

In the facts and circumstances of the case, I direct the Principal Secretary, Department of Health, Government of Bihar to consider the petitioner's claim for interest at the said rate on account of delayed payment of the gratuity amount.

So far as deduction of amount of Rs. 64,140/- is concerned, I would have not gone into the petitioner's claim because of delay and the fact that the said amount has already been adjusted. However, in my view, the respondents have no authority to adjust any amount from the amount of gratuity payable to the petitioner under the Bihar Pension Rules. The decision of the respondents to this extent can not be sustained.

If any amount has been paid to the petitioner in excess because of wrong fixation of pay, the respondents can, after giving him due opportunity of having take a decision to recover the amount but only in accordance with law.

It is made clear that if any amount is found payable



to the petitioner against his claim for interest on gratuity amount, the same can be adjusted against the said excess amount of salary paid to the petitioner, if he fails to satisfy the respondents that he was not entitled for the amount which he received against salary and which was allegedly found more than his actual entitlements.

The Principal Secretary, Health Department, Bihar, Patna will be required to take a final decision on both these issues namely recovery of excess payment and interest on the amount of gratuity within a period of three months from the date of receipt/production of a copy of this order.

It is indicated that if the Principal Secretary, Health Department, Bihar, Patna arrives at a conclusion that the petitioner is not entitled for any interest on delayed payment, he will record reasons in support of that. As already indicated above, recovery/deduction in view of excess payment made to the petitioner against salary shall be taken only after giving the petitioner a notice and by passing a speaking order.

This application stands disposed of with the aforesaid observations.

(Chakradhari Sharan Singh, J.)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.08.2016
Transmission Date	N.A.