IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 660 of 2001
IN
Civil Writ Jurisdiction Case No 6964 of 2001

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Shyama Charan Sinha
.... Appellant/s
Versus
The State of Bihar & Ors
.... Respondent/s

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For the Appellant/s : M/s Ram Janam Pd & Hari Nr Ram, Advs
For the B a n k : Mr K K Sinha, Advocate
For the S t a t e : Mr Brajesh Kumar, AC to AAG 11

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
&
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 21-04-2016

This intra-Court appeal has been filed against the judgment dated 20.06.2001 of learned Single Judge of this Court passed in CWJC No 6964 of 2001 (Shyama Charan Sinha –Versus- State of Bihar & Others). By the aforesaid judgment, the writ petition, filed by the appellant, was dismissed.

2 The writ petitioner-appellant had claimed interest from the Bihar State Cooperative Bank Limited, Patna (for brevity, *the Cooperative Bank*) for delayed settlement of his retiral dues that is gratuity and provident fund. The learned Single Judge observed that the writ petitioner failed to show that the payment of gratuity, as being made by the Cooperative Bank, was under the provisions of the Payment of Gratuity Act and that being so, the writ petition was dismissed and further, he held that there being no statutory provision for payment of interest on delayed settlement of retiral dues, the writ petition was not maintainable. It was, accordingly, dismissed.

3 We have heard learned counsel for the writ petitioner-appellant and learned counsel for the Cooperative Bank and we regret our inability to agree with the learned Single Judge.

4 The duty to pay and settle retiral dues, immediately upon superannuation of an employee by the employer, cannot be doubted. It is not the prerogative of the employer to take his own time in calculating and paying the amount. It is the hard earned money of the employee and it is due to him as a matter of right and not as a matter of bounty. If, therefore, there is a default on the part of the employer in making prompt payment, the employer is bound to compensate the employee whether there be a law in this regard or not. The only exception being firstly where there is a legal embargo in payment. Cases illustrative of this feature would be where there is a pending departmental proceeding and under the relevant Service Rules, full payment of retiral dues is not to be made, thus, there is a statutory embargo. The second exception would be where the employee himself is solely responsible for the delay. For example, where he does not file necessary papers which he, by law, is required to file. In most of other matters, if there is a delay, then the employee has to be compensated.

5 In view of the aforesaid, we cannot uphold the judgment of the learned Single Judge who has taken a hyper technical view of the matter. We set it aside, allow the writ petition and direct the Cooperative Bank to pay on delayed payment an interest of 9% from the time the amounts were due to the time when amounts were naturally paid. This is both with regard to gratuity and provident fund.

6 This appeal is, accordingly, allowed.

7 The said payments, if any, must be made within one month from today as the appellant retired almost two decades back.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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