IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19413 of 2012

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Sharma Nand Sharma, S/O Late Prabhu Singh, R/O Village- Imaliya, P.S.- Bhelwar in the District of Jehanabad, presently living in Adarsh Colony, Road No. 3, Golak Mod, P.S.- Ram Krishna Nagar in the town & District of Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Home (Jail) Department, Government of Bihar, Patna.
2. The Inspector General of Prisons, Bihar, Patna 15.
3. The Superintendent, District Jail, Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Braj Nandan Kumar Tiwary, Advocate

For the Respondent/s : Mr. Anuj Kumar, A.C. to G.P.-24

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

Date: 20-08-2016

The grievance of the petitioner is that though he attained the age of superannuation on 31st of December, 2010 and submitted pension papers on 26th of May, 2011, but the retiral benefits have not been paid even though no departmental proceedings were initiated or pending against him.

In the counter affidavit filed, it is, *inter alia,* mentioned that the payment of arrears of salary have not been made as excess payment has been taken by the petitioner from the month of March, 2009 and that 'no objection certificate' has not been received in the office of the respondents. It is also pointed out that provisional pension is being paid since 1st of January, 2011. It is also asserted that the petitioner is an accused in P.S. Case No.114/1997 dated 29th November, 1997 in the Vaishali District for the offences under Sections 302, 353 and 120 B Indian Penal Code and Section 27 of the Arms Act which is pending. It is denied that the petitioner submitted his pension papers. In respect of payment of General Provident Fund amount, the stand of the respondents in the counter affidavit is that sum of Rs.10,000/- was taken advance by the petitioner in the year 1997-98 from the District Jail, Hajipur and Rs.25,000/- in financial year 2001-02 from the District Jail, Sheikhpur and this amount has not been adjusted by the petitioner. It is also asserted that gratuity and leave encashment has not been paid as amount of Rs.15,00,000/- has not been accounted for and the voucher has not been submitted. It is, thus, stated that the petitioner is not entitled for payment of retiral benefits till the clearance of the dues amount which has been taken by the petitioner from General Provident Fund and without receipt of 'no objection certificate' from the place where the petitioner was posted.

Learned counsel for the respondents also refers to a document (Annexure-B/6) dated 01.12.2011 by which suspension of the petitioner, consequent to pending decision in the criminal case, was revoked and the directions were sought from the Inspector General of Prisons regarding payment of retiral benefits. Learned counsel for the respondents states that the amount of General Provident Fund has since been paid.

Admittedly, no departmental proceedings were initiated for not accounting for either sum of Rs.15,00,000/- or non-deposit of Rs.10,000/- or Rs.25,000/- said to be withdrawn from the G.P.F. account.

In terms of Rule 43(b) of the Bihar Pension Rules, 1950, no departmental proceedings can be instituted for an event which took place not more than four years before the institution of such proceedings. Since no proceeding has been initiated against the petitioner even after more than five years of his retirement, the State cannot initiate any proceeding in terms of Rule 43(b) of the Bihar Pension Rules, 1950. The incidents mentioned pertain to the period, when the Petitioner was in service and still no action has been taken for more than four years after the superannuation of the petitioner.

Consequently, the assertion that Rs.15,00,000/- has not been accounted for cannot be made basis for non-payment of retiral benefits when no proceedings were initiated when the petitioner was in service or within the period prescribed under Rule 43(b) of the Bihar

Pension Rules, 1950. I find that the entire action of the respondents in not paying the retiral benefits is untenable causing injustice to the petitioner.

Consequently, the writ application is allowed. The respondents are directed to make payment of leave encashment, the gratuity and balance amount of General Provident Fund within three months.

(Hemant Gupta, J.)

Sunil

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	23.08.2016
Transmission Date	