IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14669 of 2014

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Samrendra Narayan Jha Son of Late Amrendra Narayan Jha Resident of Mohalla - Adarsh Colony, Meera Bhawan, West Patel Naga, P.S. - Shastrinagar, District - Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Home (Special) Department, Government of Bihar, Patna.
3. The Finance Commissioner, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
5. The Under Secretary, Home (Special) Department, Government of Bihar, Patna.
6. The Accountant General, Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Satish Chandra Jha, Advocate
For the State : Mr. Anil Kumar Singh, Advocate
For the Accountant General: Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL JUDGMENT
Date: 17-09-2016

The dispute, in the present case, is limited. The petitioner superannuated while in suspension, pending departmental proceeding, on 30.11.2010. In the departmental proceedings, which were then carried out with the aid of Rule 43(b) of the Bihar Pension Rules, the punishment was of forfeiture of entire pension forever. This is subject matter of challenge in a separate writ proceeding. Apparently, pursuant to the said order of forfeiture of pension, State first did not pay any amount by way of earned leave encashment and gratuity. Later on, earned leave encashment was paid. Gratuity is being denied on the ground that Rule 27 of the Bihar Pension Rules states "pension includes gratuity" for the purposes of these Rules. On this provision, it is being submitted by the State that there is an order of forfeiture of pension, gratuity also is forfeited.

In relation to leave encashment, learned counsel for the petitioner makes a grievance by showing that, first, when leave encashment calculations were made, apart from taking the number of days of entitlement to be 300, the total amount payable under this head was calculated at Rs. 3,85,560/-, but now, when it is being paid, not only the number of days have been reduced by three (3), but the amount payable has come down drastically to Rs. 2,04,019/- (Two Lacs Four Thousand Nineteen only), a reduction of over 1,80,000/-. This is impermissible and wrong.

Having heard learned counsel for the petitioner and learned counsel for the State and, perused the counter affidavits and replies thereto, and with their consent, the writ petition is being disposed of at this stage itself.

Coming to the question of gratuity first. No doubt, Rule 27 of the Bihar Pension Rules, 1950, which reads as “pension includes gratuity”, but one must be cautious in applying the same. Rule 27 is contained in Chapter 2 of the Bihar Pension Rules. It is the definition chapter, and, Rule 6 thereof itself shows that the definition is only for the purposes of the Rules. Gratuity is no more a gratuitous payment made by the employer to an employee. It is a statutory liability under the Payment of Gratuity Act and is an amount earned by an employee in course of his service, though paid upon his superannuation which is not, in *stricto sensu,* a part of pension. The definition only shows that, it is a payment, which is made upon superannuation along with other pensionary benefits, but that does not mean that pension and gratuity are synonymous. They are different and distinct nature of payment. Thus, when there is an order of forfeiture of pension, it would not take within its sweep, forfeiture of gratuity, which has already been earned. State would, thus, be required to pay the gratuity in entirety to the petitioner and there would be no forfeiture thereof.

Now, we may come to leave encashment. The difference, as noted above, in the two calculations is not far to be seen. Annexure-13 series, which is purported calculations of leave encashment, as first made in May, 2014, though not a final order. It is not signed nor communicated. It only reflect the calculations. Whereas the final order is at page 180 of the brief, part of the Annexure-13 series, and is, dated 08.04.2016. The difference in calculation is primarily, because of calculation of the pay, last drawn, which is the basis for calculating the earned leave encashment entitlement. The last pay, in case of petitioner, would be the actual pay before he was put under suspension. It seems, he was put under suspension for the second time on 20.02.2007. The first calculation is based upon the revised pay entitlement as on the said date, the pay revision having taken place with effect from 01.01.2006. The calculation is also available in detail, which is part of Annexure-12, order dated 14.06.2011, calculating his pay entitlement as per pay revision with effect from 01.01.2006. The pay comes to Rs. 26,590/-. On revised basis the dearness allowance has to be added. Whereas, when the final calculation has been made, his pay including dearness allowance has been taken to be Rs. 20,608/-, which is about Rs. 15,000/- less than the revised pay, which obviously is calculated on the basis of unrevised pay. That is not correct. The leave encashment entitlement has to be calculated on the basis on the pay which a person is entitled on the date of his superannuation, and, therefore, it would be the revised pay of that day. Thus, State was in error in calculating his leave encashment entitlement on the basis of unrevised pay. Such action cannot be sustained.

State is, accordingly, directed to pay the entire gratuity amount forthwith, as also the incremental value of leave encashment based on the calculation based on revised pay. All payments must be made within one month from today. The liability to pay the petitioner within the time aforesaid would be on respondent no. 2, the Principal Secretary, Home (Special) Department, Government of Bihar, Patna.

With the aforesaid directions, the writ petition is allowed.

(Navaniti Prasad Singh, J.)

Rajeev/-

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