IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13000 of 2016

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Pramod Kumar Singh Son of late Jamadar Singh, resident of Mohalla- Judges Colony, P.S. Danapur, District Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing , Department Government of Bihar, Patna.
2. The Patna Municipal Corporation, Mauryalok Complex Patna through its Commissioner.
3. The Municipal Commissioner, Patna Municipal Corporation, Mauryalok Complex, Patna.
4. The Controller of Municipal , Finance And Accounts , Patna

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Shekhar Singh, Advocate
For the State	:	Mr. Rajeev Kumar Sinha, AAG-7
For PMC	:	Mr. Bindyachal Singh, Advocate
		Mr. Sanjay Prakash Verma, Advocate
For the Respondents	:	Mr. Yogendra Prasad Sinha-AAG7

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 12-10-2017

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Patna Municipal Corporation.

2. The petitioner superannuated from service on 31.05.2015 from the post of Chief Accounts Officer-cum-Controller of Finance and Accounts, Patna Municipal Corporation, Patna.

3. The grievance of the petitioner is that despite there being no criminal case or departmental proceeding initiated against him while he was in service, the respondent Municipal Corporation has withheld payment of his gratuity, leave encashment, arrears of dearness allowance for the period January, 2015 to May 2015 and the arrears of benefits of first Assured Career Progress (for short 'ACP').

4. The petitioner was appointed in the Patna Regional Development Authority as Chief Accounts Officer vide letter no. 830 dated 09.02.1989 pursuant to the recommendation of the Bihar Public Service Commission dated 14.09.1988 and the order dated 05.11.1988 issued by the Urban Development Department. He joined the said post on 31.03.1989. Later on, Patna Regional Development Authority was dissolved and substituted by Patna Municipal Corporation. Between the period 16.05.2010 and 15.07.2010, the petitioner worked on lien in Central University. Similarly, between the period 16.07.2010 and 14.06.2014, he

worked in University of Allahabad (a Central University). However, during the said period, the lien of the petitioner was kept reserved in the Patna Municipal Corporation vide Govt. of Bihar order no. 902 dated 05.09.2012.

5. Learned counsel for the petitioner submitted that leave salary contribution of the petitioner has already been received by the Corporation from the Central University, Jharkhand and the University of Allahabad long back before his superannuation. He submitted that the petitioner was granted first ACP vide order no. 135/08 dated 18.09.2008 with effect from 01.04.2001 upon completion of 12 years of service, but the payment of arrears from 01.04.2001 to August, 2008 accrued upon grant of first ACP has not been released despite several representations of the petitioner. He submitted that after retirement on 31.05.2015, the petitioner expected that all his retiral benefits as well as due benefits of 1st ACP can be released, but without any rhyme and reason the same has not been paid till date.

6. Counter-affidavit and supplementary counter-affidavit have been filed on behalf of respondents no. 2 to 4. From the pleadings made in the counter-affidavits, it would be manifest that admissible dues of the petitioner are being denied on the ground

that in the light of letter no. 4042 dated 24.06.2016 for the lapses and default on the part of the petitioner with regard to payment of Rs.2,15,39,084/- towards income tax, vide memo no. 8755 dated 05.09.2017, a departmental proceeding has been initiated against the petitioner. Learned counsel appearing for the respondent Patna Municipal Corporation submitted that any decision over the pending dues of the petitioner would be taken only after the completion of the departmental proceeding initiated against him on 05.09.2017.

7. A rejoinder to the counter-affidavit has been filed on behalf of the petitioner.

8. Referring to the averments made in the rejoinder to the counter-affidavit, learned counsel for the petitioner submitted that the plea taken by the respondents for denial of payment of retiral dues to the petitioner is wholly illegal. He submitted that there was Audit Objection in A.G.'s Audit Report 499/2008-09 for the period 2006-07, 2007-08 pursuant to which some sort of action was proposed against the petitioner, which was challenged by the petitioner before this Court by filing a writ petition bearing CWJC No. 16095 of 2010. In the said writ petition, vide order dated 28.09.2010, this Court has categorically held that the contents of

the two letters referring audit objection whereby the petitioner was being held responsible for levy of tax on the Patna Regional Development Authority to the tune of Rs.215.39 lacs, will have no bearing on the prospect of the petitioner as those two letters have been issued by the authorities without granting him opportunity of being heard. He submitted that even the Municipal Commissioner, Patna Municipal Corporation vide his letters dated 27.05.2015 and 09.07.2016, as contained in Annexure 8 and 9 to the rejoinder affidavit had clearly held that no action can be taken against the petitioner in the light of the order passed by this Court in CWJC No. 16095 of 2010 in spite of audit objection regarding levy of income tax to the tune of Rs.215.39 lacs. He contended that the petitioner had already superannuated on 31.05.2015 and employer and employee relationship came to an end. After more than two years of superannuation, it is impermissible for the Municipal Corporation to initiate any departmental proceeding against the petitioner. He submitted that till date, no notice of any kind has been served upon the petitioner in respect of any proceeding initiated against him and the letter by which a proceeding is said to have been initiated against the petitioner has also not been brought on record by the respondents in their counter-affidavits filed in the case.

9. Learned counsel for the State submitted that the State is not a contesting party and the dispute is between the petitioner and Patna Municipal Corporation and, thus, the State has nothing to say.

10. I have heard learned counsel for the parties and perused the record.

11. Admittedly, till the petitioner was in service no proceeding either departmental or judicial was initiated against him. Learned counsel for the petitioner has rightly submitted that once the employer and the employee relationship ceased pursuant to superannuation of the petitioner, it is not permissible for the respondent Corporation to initiate a departmental proceeding against the petitioner under the Civil Services (Classification, Control and Appeal) Rules applicable against the employees of the Municipal Corporation after more than two years of his superannuation.

12. In that view of the matter, the so-called departmental proceeding said to have been initiated against the petitioner vide memo no. 8755 dated 05.09.2017, as stated by the respondent

Municipal Corporation in its counter-affidavit, is declared to be *non est* and *void abintio* in the eyes of law. The respondents are restrained from proceeding ahead in any manner in the departmental proceeding alleged to be initiated against the petitioner pursuant to the aforesaid decision dated 05.09.2017.

13. It is well known that retiral benefit is neither a bounty nor a matter of grace depending upon the sweet will of the employer. It is a payment for the past services rendered and is a socio welfare measure rendering social-economic justice.

14. In **State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr. [2013 (3) PLJR SC 458]**, the Supreme Court observed :

> "It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India."

15. I am of the considered opinion that in the absence of any disciplinary proceeding against the petitioner while he was in service and in absence of having been convicted of any criminal charge, it is not within the jurisdiction of the Municipal

Corporation to withhold his retirement benefits.

16. In that view of the matter, I direct the respondents to pay all the admissible retiral dues to the petitioner within eight weeks from today. In case the aforesaid dues are not paid within the aforesaid period of eight weeks, the petitioner would be entitled to receive interest over the due amount at the rate of 8 per cent per annum from the date it became due till the date of its actual payment. In such eventuality, the respondents would be at liberty to recover the amount of interest from the salary of the employee(s)/officer(s) responsible for causing delay in payment of retiral benefits of the petitioner in accordance with law. The respondent no. 3 is also directed to examine the claim of the petitioner in respect of arrear of ACP and pass a reasoned order in this regard within a period of two months from the date of receipt of a copy of the order. In case the claim of the petitioner is found admissible, the arrear amount of ACP shall be paid to him within one month thereafter. In case, the claim is rejected the reasoned order should be communicated to the petitioner on his postal address.

17. With the aforesaid observations and direction, this writ

petition is allowed.

18. The Registry is directed to communicate the order to the respondents no. 3 and 4 forthwith.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.10.2017
Transmission Date	NA