IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1450 of 2016

Umashankar Kanth son of Late Laxmi Narayan Kanth resident of M.O.- Netaji Subhash Chowk Kurji Balupar, P.O.- Sadakat Asharam, P.S.-Digha, District- Patna (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
2. The District Collector, Patna
3. The Deputy Collector (Establishment), District Collectorate, Patna
4. The Cirlce Officer, Paliganj, Patna
5. The District Programme Officer, Collectorate, Patna

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Sinha, Advocate
	:	Mr. Deepak Kumar Abhishek, Advocate
For the Respondent/s	:	Mr. Anujit Sinha, AC to PAAG-2

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-02-2017

The present writ application has been filed by the petitioner for issuance of direction to the respondents for payment of retirement benefits to the petitioner, who has superannuated from the post of Revenue Clerk on 30th September, 2015 from Circle Office, Paliganj, Patna.

2. It is submitted by the learned counsel for the petitioner that after superannuation he submitted all the relevant papers to the authority concerned for payment of retirement benefits under different heads including payment of pension, but no order has been passed for payment of pension or even provisional pension or other retiral benefits.

3. A counter affidavit has been filed on behalf of respondent no.4 wherein it has been contended that being Revenue Clerk at Circle Office, Paliganj, Patna, the petitioner withdrew Rs.65,00,000/- (sixty five lakh) from Circle Office, Maner, Patna for distribution of food and cash amount to the flood victims, but the said amount was not adjusted. It is further stated in the counter affidavit that on calculation approximately Rs.19,58,263 (rupees nineteen lakh fifty eight thousand and two hundred sixty three) is required to be paid to the petitioner as payment of retirement benefits under different heads, but the said amount is less than Rs.65,00,000/- (sixty five lakh), as taken by the petitioner for distribution of cash or food to the poor flood victims and, hence, the respondent is unable to make any payment to the petitioner.

4. Learned counsel for the State submitted that respondent Circle Officer is not sitting tight over the matter relating to payment of the petitioner, but due to alleged withdrawal of huge amount the retirement benefits of the petitioner has been withheld.

5. The petitioner has filed a rejoinder to the counter affidavit filed on behalf of respondent no.4. It is contended in the rejoinder that the money advanced was properly distributed amongst the beneficiaries, but the receipts/vouchers submitted by the petitioner against the advance money, which was distributed amongst the beneficiaries was not adjusted by the concerned authority and the matter has been kept pending for long.

6. Referring to the aforesaid rejoinder application, learned counsel for the petitioner submitted that original voucher was submitted by the petitioner in two sets in the office of Circle Officer, Maner, Patna on 9.6.2014 and 18.6.2014, which was duly received by the Nazir of the Circle Office, Maner, Patna and the remaining Rs.500/- (five hundred) was returned to the Nazir by cash on 30th March, 2014, which was also received by him. He submitted that inspite of several letters submitted by the petitioner to the Circle Officer, Maner, Patna, vouchers submitted by him have not been adjusted against the advance made to him for distribution of food and cash amount amongst the beneficiaries of the flood victims. He submitted that the entire service of the petitioner was blotless and no proceeding was ever initiated while he was in service or even after his retirement.

7. I have heard learned counsel for the petitioner and learned counsel for the State and perused the record.

8. The payment of pension does not depend upon sweet will or grace of the employer. The right to receive pension cannot be taken away without the due process of law as per the provision of Article 300-A of the Constitution of India.

9. In ***State of Jharkhand and Others vs. Jitendra Kumar Srivastava Another, [(2013) 12 SCC 210***, the Supreme Court observed that gratuity and pension are hard earned benefits of an employee and right to receive pension is in the nature of "property". The Supreme Court held that this right cannot be taken away from an employee even during departmental proceeding or criminal proceeding. It held as under:-

> ***" It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. It is thus a 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."***

10. In the case of Jitendra Kumar Srivastava (supra), the State of Jharkhand had moved the Supreme Court challenging the order of Division Bench of the Jharkhand High Court which had held that under the Bihar Pension Rules, the Government does not have power to withhold gratuity and pension during the pendency of the departmental proceeding or criminal proceeding and/or withholding leave encashment at any stage either prior or after conclusion of the proceeding. In that case after retirement, the Government had sanctioned 90% provisional pension while remaining 10% pension and salary of his suspension period was withheld pending outcome of the criminal case/departmental inquiry against him. He was also not paid leave encashment and gratuity. The Supreme Court after examining Rule 43(b) of the Bihar Pension Rules in detail held as under:-

> ***"A reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension, etc. only when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. ………………."***

11. In Jitendra Kumar Srivastava case (supra) the Supreme Court also considered the question whether the right to receive pension by a government servant is "property", so as to attract Article 19(1)(f) and 13(1) of the Constitution. After considering the decision of the Supreme Court in ***Deokinandan Prasad vs. State of***

Bihar, [(1971) 2 SCC 330; State of M.P. vs. Ranojirao Shinde, AIR 1968 SC 1053 and State of W.B. vs. Haresh C. Banerjee, [(2006) 7 SCC 651, it held:

> ***"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300-A of the Constitution of India reads as under:***
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> ***"300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law". Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.***
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> ***17. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of the aforesaid Article 300-A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no***

provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different."

12. When I look to the facts of the present case, I find that though the petitioner retired from service on 30th September, 2015 and no proceeding has been initiated against him so far, the respondents are denying his retiral benefits simply on the ground that certain advance made to him while he was in service for distribution of food and money to the flood victims have not been adjusted. It is not even the case of the State that any criminal case or disciplinary proceeding or any proceeding under the Bihar Pension Rules has been initiated against the petitioner so far. In view of the well settled principle of law and in view of the ratio laid down by the Supreme Court in Jitendra Kumar Srivastava case the impugned action of the respondent no.4 in declining to make payment of retiral benefits to the petitioner cannot be approved as it is grossly illegal and wholly unjustified.

13. In that view of the matter, I direct the respondent no.4, the Circle Officer, Paliganj, Patna to sanction all the retiral benefits of the petitioner within two months from the date of receipt/communication of this order failing which the petitioner will be entitled to receive interest over the due amount at the rate of 8%

per annum from the date they became due till the date of their actual payment and the State would be at liberty to realize the amount of interest from the person(s) responsible for the delay in accordance with law.

14. Let a copy of the order be communicated to the District Magistrate, Patna through fax to be communicated to the Circle Officer, Paliganj, Patna (respondent no.4).

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.02.2017
Transmission Date	