IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5657 of 2014

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Shiv Shankar Thakur, Son of Late Harihar Thakur, Resident of Village -Pirauta, P.O.- Pirauta, Police Station- Morhourah, District- Saran

.... Petitioner

Versus

1. The State of Bihar through the Collector-Cum-District Magistrate, Saran at Chapra
2. The District Programme Officer (Establishment) Saran at Chapra
3. The Block Education Extension Officer, Morhowrah, Saran
4. The Head Master, Primary School, Bind Bahuara, Marhowrah, Saran

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Srivastva, Advocate

For the Respondent/s : Mr. Kumar Kamal Nayan, AC to SC-28

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-02-2017

It is a well known principle that pension is not a bounty. The benefit is conferred upon an employee for his unblemished career.

2. In ***Deokinandan Prasad v. State of Bihar and others [(1971) 2 SCC 330]***, the Supreme Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government, but is governed by the rules and a Government servant coming within those rules is entitled to claim

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pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to the service and other allied matters that it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to a officer not because of any such order but by virtue of rules.

3. This view of the Hon'ble Supreme Court was re-affirmed in ***State of Punjab and Anr. v. Eqbal Singh [(1976) 2 SCC 1].***

4. In ***State of Jharkhand & Ors. v. Jitendra Kumar Srivastava [(2013) 12 SCC 210]***, the Hon'ble Supreme Court observing that gratuity and pensions are hard earned benefits of an employee and right to receive pension is in the nature of "property" held that this right can not be taken away from a Government employee pending departmental or criminal proceedings. The Court held that this right to property cannot be taken away without due process of law as per provisions of Article 300-A of the Constitution of India.

5. Article-300-A was inserted in the Constitution of India after the 44th amendment eliminated the right to acquire, hold and dispose of property as a fundamental right. The result is that the right to property as a fundamental right is now substituted as a

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statutory right.

6. In the background of the legal position, as discussed above, when I look to the facts of the present case, I find that the action of the respondent authorities in denying the payment of pension, commutation of pension and gratuity to the petitioner is glaring example of executive arbitrariness and administrative highhandedness.

7. Admittedly, the petitioner was appointed as an Assistant Teacher in Prathmic Vidyalaya, Kakrahat, Jalalpur, Saran on 21.12.1973 and, thereafter, he was transferred to Primary School, Narharpur on 19.02.1982 and lastly he was transferred to Primary School Bind Bahuara, Morhaurah, Saran on 20.12.1986 from where he retired on 31.12.2012 after completion of the age of superannuation.

8. It is submitted by the learned counsel for the petitioner that the petitioner had an unblemished service record and no show-cause notice or any judicial proceeding was initiated against him while he was in service. It is further contended that even under the Bihar Pension Rules, 1950, no proceeding has been initiated against the petitioner after his retirement. He submitted that though the payment under the heads provident fund amount, leave encashment and group insurance has been made to the petitioner,

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payment of the amount of pension, gratuity and commutation of pension has not been made so far.

9. A counter affidavit has been filed on behalf of the State wherein it is stated that the amount of pension, gratuity and commutation of pension has not been paid to the petitioner because of charge of embezzlement against him. The counter affidavit is completely silent about initiation of any departmental proceeding or criminal proceeding against the petitioner.

10. In paragraph no.10 of the counter affidavit filed on behalf of respondent no.2, a vague statement has been made about charge of embezzlement against the petitioner. It reads as under:-

> "10. That with regard to the statements made in paragraph No.-5 of the writ petition under reply, it is humbly stated that the petitioner has been paid G.I.C., E.L. and G.P.F. but other retiral benefit has not been paid because a charge of embezzlement against him has been found by the authorities concerned."

11. When the matter was taken up by this Court on 22nd of November, 2016, learned counsel for the State took time to take instruction on the point as to whether or not any disciplinary proceeding or criminal proceeding has been initiated against the

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petitioner. Hence, the matter was adjourned to 7th of December, 2016. Today, when the matter has been taken up, learned counsel for the State submitted that till date he has not received any instruction from the respondents in this regard. He submitted that the matter be adjourned further so as to enable him further instructions.

12. Since the petitioner retired on 31st of December, 2012 and the writ petition was filed on 19th of March, 2014 after serving a copy of the petition upon the State and the specific pleading of the petitioner with regard to non-initiation of any proceeding, judicial or departmental, while in service or even after retirement, has not been controverted in the counter affidavit, I decline to adjourn the matter to any future date.

13. As stated above, 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 record. There is nothing on record to suggest that the petitioner was ever prosecuted or proceeded against departmentally while in service. There is also nothing to suggest that any proceeding has been initiated against him under the Bihar Pension Rules even after his retirement.

14. Under these circumstances, this Court is of the

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considered opinion that the respondents have no right to withhold the pensionary benefits of the petitioner only on the ground of some vague allegation of some embezzlement.

15. In that view of the matter, I direct the respondent no.2 to make payment of pension, gratuity and commutation of pension to the petitioner within six weeks from the date of receipt/production of a copy of the order.

16. The writ application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2017
Transmission Date	NA

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