IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18192 of 2014

==

Nathuni Mandar son of Late Murat Mandar, Resident of Village - Jharabaria, P.S. - Biraul, District - Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Darbhanga
3. District Programme Officer, (Establishment), Belbhadrapur, Laheriasarai, District - Darbhanga
4. Block Education Officer, Baheri, P.O. - Baheri, District - Darbhanga
5. Accountant General (A and E), Bihar, Patna

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Bishwanath Prasad Singh, Advocate

For the Respondent/s : Mr. G.P.Ojha, G.A.-7

: Mr.G.Krishna, A.C. to G.A.-

For the Accountant General : Mr. Ranjan Kumar, Advocate

==

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-05-2017

In the present writ application the petitioner has prayed for issuance of a direction to the respondents to pay his post retiral benefits.

2. It is contended by the learned counsel for the petitioner that the petitioner being Headmaster of Primary School, INAI, Prakhand Baheri, District Darbhanga, retired on attaining the age of superannuation on 31.12.2012. After retirement, he received all other terminal dues and was paid provisional pension for the month of

January to March, 2013. He was also paid commuted value of pension, but after March, 2013 suddenly the payment of even provisional pension has been stopped. He contended that on the date of retirement there was neither any disciplinary proceeding pending against him nor he was being prosecuted in any criminal proceeding. He contended that even after retirement no action has been taken by the respondents against the petitioner either for withholding the amount of pension or for recovery of any amount under the relevant provisions of the Bihar Pension Rules, 1950 (for short 'Pension Rules'). He contended that since more than three years the petitioner is being denied payment of pension for no valid reason.

3. *Per contra*, learned counsel for the State submitted that during service period the petitioner was assigned to complete the school building for an estimated cost of Rs.7,22,400/- but the petitioner failed to complete the construction of the school building and a sum of Rs.2,75,394/- is still lying due against the petitioner. He contended that the petitioner is neither being harassed nor being arbitrarily deprived his right to pension but due to dues accrued upon him payment certificate is rightly not being given to him for the purpose of Treasury as a result of which he is not being paid his pension since April, 2013. He contended that once the petitioner would deposit the dues accrued upon him, the payment certificate would immediately be sent to the Treasury Officer.

4. On the other hand, learned counsel for the Accountant General, Bihar, Patna submitted that since the pension of the petitioner was sanctioned by the District Programme Officer, (Establishment), Belbhadrapur, Laheriasarai, Darbhanga, the office of the Accountant General, Bihar, Patna authorized payment of pension to the petitioner as back as on 9th January, 2014 itself. He contended that once the order of authority is issued by the office of the Accountant General, Bihar, Patna, the liability to pay pension is upon the departmental authorities and the Treasury Officer concerned.

5. I heard learned counsel for the parties and carefully perused the record.

6. It would be evident from the pleading of the parties that the entire service record of the petitioner was unblemished and even after retirement on 31.12.2012 the respondents have not proceeded against him under the provisions of the Pension Rules for withholdment or recovery of pension.

7. The general provisions for grant of pension are incorporated in Chapter III Part-1 of the Pension Rules. The payment of pension to a Government servant against whom a departmental or judicial proceeding or enquiry has been taken is dealt with in Rule 43(b) and (c) of the Pension Rules.

8. Rule 43(b) of the Pension Rules empowers the State Government to withhold or withdraw a pension or any part of it and to recover from a pension of the whole or part of any pecuniary loss caused to the Government by misconduct or negligence. However, the Government can exercise such power only in case if the pensioner is found guilty of grave misconduct in departmental or judicial proceeding.

9. The proviso to Rule 43(b) of the Pension Rules stipulates that such departmental proceeding, if not instituted while the Government servant was on duty either before retirement or during employment shall not be instituted save with the permission of the State Government and such sanction shall not be accorded in respect of any event which took place more than four years before institution of such proceeding. It further stipulates that the proceeding shall be conducted in accordance with the procedure applicable to the proceeding on such an order of dismissal from service may be made.

10. Rule 43(c) of the Pension Rules confer powers upon the State Government to pay provisional pension to the Government servant whether departmental or judicial proceeding in which prosecution sanctioned and initiated against such servant is not concluded till his retirement. However, in such case also the amount of provisional pension shall in no case be less than ninety per cent.

11. Having noticed the statutory Pension Rules governing the case of the retired Government servant when I look to the facts of the present case, it would be evident that no departmental proceeding was initiated against the petitioner while he was in service. Even after retirement, no proceeding has been initiated against him under the relevant Pension Rules. He has never ever been held guilty of causing any loss to the Government by misconduct or negligence. The full pension of the petitioner has been sanctioned by the respondent no.4 and the Accountant General, Bihar, Patna has authorized the payment of full pension on 9th January, 2014 but the petitioner has been paid provisional pension only for the month of January to March, 2013 and even payment of provisional pension has been stopped since then. The only ground on the basis of which payment of pension of the petitioner is stopped since April, 2013 is that due to the dues of Rs.2,75,394/- accrued upon the petitioner, the payment certificate for the purpose of Treasury has not been issued by the respondent no.3, the District Programme Officer (Establishment), Belbhadrapur, Laheriasarai, Darbhanga.

12. Having regard to the facts and circumstances of the case, in the opinion of this Court, the afore-stated ground of the respondent no.3 for denying the payment of pension of the petitioner cannot be approved as more than four years have already elapsed since the date of retirement of the petitioner and no departmental or judicial proceeding has been initiated against him for any act of misconduct or negligence so far. The respondents are debarred from proceeding in any manner against the petitioner under the relevant Pension Rules for withholdment or recovery from pension. The amount being claimed by the respondents is not admitted by the petitioner. A disputed amount cannot be made a ground for withholdment of pension of a retired employee.

13. By now, it is well settled that pension is hard earned money of a Government employee and is not a bounty. In ***D.S. Nakara vs. Union of India [(1983) 1 SCC 305],*** the Hon'ble Supreme Court observed:

> "**18.** The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why, was it required to be liberalized ? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?
>
> **19.** What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial

division of retirement pre and post a certain date? We need seek answers to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar, 1971 (Supp) SCR 634 : (AIR 1971 SC 1409) wherein this 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 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 service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. lqbal Singh, (1976) 3. SCR 360 : (AIR 1976 SC 667)."

14. The right to receive pension is in the nature of "property" has recently been interpreted in **State of Jharkhand and Others vs. Jitendra Kumar Srivastava and Another, [(2013) 12 SCC 210]**. In the said case the Hon'ble 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". It held that this right cannot be taken away from a Government employee without due process of law as per the provisions of Article 300-A of the Constitution of India.

15. Having regard to the discussions made above, I am of the opinion that the action of the respondent no.3 in withholding the pension of the petitioner is wholly illegal, arbitrary and unwarranted in law.

16. Accordingly, I direct the respondent no.3, the District Programme Officer (Establishment), Belbhadrapur, Laheriasarai, Darbhanga to issue payment certificate in favour of the petitioner within two weeks from the date of receipt/production of a copy of this order. I further direct the respondent no.3 to ensure that payment of arrears of pension and current pension is made to the petitioner within two months from the date of receipt/production of a copy of this order.

17. It is made clear that this order will not preclude the

State Government from taking steps to recover the due amount from the petitioner by resorting to other remedies, which may be available in law.

18. With the aforesaid observations and directions, the application stands allowed. No costs.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.05.2017
Transmission Date	