

THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18015 of 2015

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Shyam Sundar Prasad son of Ram Chandra Prasad, resident of village- Ganpati Bigha, P.O. + P.S. - Hilsa, District - Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Health, Bihar, Patna.
3. The Director-in-Chief, Health Services, Bihar, Patna.
4. The Civil Surgeon-cum-Chief Medical Officer, Patna.
5. The Incharge Medical Officer, Primary Health Centre, Daniyawa, Patna.
6. The Treasury Officer, Patna.
7. The Provident Fund Officer, Patna.
8. The District Magistrate, Patna.
9. The Branch Manager, State Bank of India, Gulzarbagh, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the S.B.I. : Mr. Anjani Kumar Mishra, Advocate
For the State : Mr. Alok Ranjan, A.C. to G.A.-VI

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-02-2017

The present application has been filed by the petitioner for issuance of direction to the respondents to pay his retiral benefits.

2. The claim of the petitioner is with regard to payment of amounts of general provident fund, group insurance and leave encashment with statutory interest.

3. The contention of the petitioner is that he was appointed on 1st March, 1976 as Basic Health Worker. After serving for more than thirty four years, he superannuated on attaining the age of retirement on 30th November, 2010 from Primary Health Centre, Daniyawan, Patna. After superannuation, he filed his pension papers



in prescribed proforma for his retirement benefits. The petitioner was paid amount of gratuity and commuted value of his pension. His pension is also being paid regularly. However, the post retiral benefits like provident fund, leave encashment and group insurance have not been paid to him.

4. Initially, a counter affidavit was filed on behalf of respondent no.5, the Incharge, Primary Health Centre, Daniyawa, Patna stating therein that total outstanding dues of general provident fund, amount equivalent to earned leave and group insurance have already been paid to the petitioner long back.

5. But when the learned counsel appearing for the petitioner submitted on 09.08.2016 before this Court that no amount as indicated above has been paid to the petitioner, the Court allowed him to implead the District Magistrate, Patna and the Branch Manager of State Bank of India, Gulzarbagh, Patna as respondents no.8 and 9 and the District Magistrate, Patna was directed to hold an enquiry in this regard and submit his report by way of filing a counter affidavit. It was also ordered that if the District Magistrate, Patna comes to a conclusion that the amounts in question have been misappropriated by any one else and have not been paid to the petitioner without any lapses on his part, apart from lodging of First Information Report against the concerned person, he will also be required to take steps for



payment of the said amount to the petitioner.

6. Pursuant to the aforesaid order dated 09.08.2016, the District Magistrate, Patna constituted a two-member committee vide order as contained in letter no.2639 dated 26.8.2016 to enquire into the matter. The outcome of the enquiry was that it was found that one Suman Kant Sinha was the person who had fraudulently encashed the aforesaid post retiral benefits of the petitioner and several other employees. When the respondents came to know that the aforesaid retiral benefits were not paid to the petitioner, a request was made to the Government and after receipt of allotment from the Health Department, payments of leave encashment, group insurance and general provident fund amount have been made to the petitioner in the month of January, 2017.

7. A supplementary counter affidavit has also been filed on behalf of respondents no.4 and 5 stating details of payment made under different heads to the petitioner.

8. The petitioner does not dispute the aforesaid contention of the respondents. However, learned counsel for the petitioner submitted that though the petitioner retired on 30th November, 2010, the amounts of leave encashment, provident fund and group insurance have been paid to him in January, 2017. His grievance is that no interest has been paid by the respondents over the aforesaid amount to



the petitioner. He submitted that the unusual delay of over six years in making payment of retiral dues has caused immense hardship to the petitioner and the petitioner is entitled to be compensated by paying suitable interest for the delay caused in paying his retiral benefits.

9. On the other hand learned counsel for the respondent State submitted that there was no deliberate delay on the part of the State in making payment to the petitioner. As a matter of fact, the State did pay the amount, but one Suman Kant Sinha fraudulently withdrew the same for which an FIR has already been instituted against him and he has been dismissed from service. He submitted that, in the peculiar facts and circumstances of the case, the State may not be saddled with burden of interest as the State has already paid the amount involved in the case twice.

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

11. It is an admitted case in which there was an inordinate delay of over six years in making payment of certain post retiral dues of the petitioner. True it is that a fraudulent withdrawal was made by some other employee of the Health Department, but for the said fraudulent withdrawal, the petitioner cannot be held responsible in any way. Had the amount been paid to him immediately after retirement, he would have invested the same in the bank or under



some other investment scheme, which would have earned interest at the market rate.

12. In *State of Kerala and Others vs. M. Padmanabhan Nair*, [(1985) 1 SCC 429], the Supreme Court held that pension and gratuity are no longer any bounty to be distributed by the government to its employees on their retirement, but have become valuable rights and property in their hands and any culpable delay in settlement and disbursement of post retiral dues must be visited with the penalty of interest at the current market rate till the date of its actual payment.

13. Regarding delayed payment of pension and payment of interest the Supreme Court in *Union of India vs. Justice S.S.Sandhawalia*, [(1994) 2 SCC 240] held:

“Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court’s order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year.”

14. In *S.K.Dua vs. State of Haryana and Another* [(2008) 3 SCC 44], the Supreme Court held:

“If there are statutory rules occupying the field, the



appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of “bounty” is, in our opinion, well founded and needs no authority in support thereof.”

15. In *H. Gangahanume Gowda vs. Karnataka Agro Industries Corpn. Ltd.*, [(2003) 3 SCC 40], the Supreme Court held that if there was a delay in not releasing post retiral benefits, it was mandatory of the court to award interest.

16. The pension or gratuity being no longer bounty, the Supreme Court crystalised the payment of interest for delayed payment as a normal practice in *O.P.Gupta vs. Union of India & Others*, [(1987) 4 SCC 328] in the following words:

“Normally, this court, as a settled practice, has been making direction for payment of interest at 12 per cent on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case.”



17. On conclusion and upon perusal of the legal principles and the ratio laid down by the Supreme Court in the decisions cited hereinabove, in the opinion of this Court since the amounts of leave encashment, group insurance and provident fund have been paid to the petitioner after a period of over six years for no fault on his part, the respondents are liable to pay interest over the amount.

18. It is known to all that the rate of interest on deposits has substantially been reduced since 1987. In that view of the matter, I direct the respondents no.4 and 7 to pay interest at the rate of eight per cent per annum to the petitioner in respect of belated payment of leave encashment, group insurance and provident fund from the date they became due till the date of their actual payment within three months from the date of receipt/production of a copy of this order failing which the respondents will have to pay interest at the rate of ten per cent with cost of rupees fifty thousand.

19. With the aforesaid observations and directions, the writ application stands disposed of.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10.2.2017
Transmission Date	

