IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 8920 of 2015

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Ashok Kumar Verma S/o Late Kuldeep Narayan Sinha, Resident of- Mohalla- C-92, Engineer's Club Campus, Budh Marg, P.O.- G.P.O., P.S.- Kotwali, District-Patna, Previously Posted as Account Clerk, Patliputra Building Division, Building Construction Department, Bihar, Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, New Secretariat Building, Bihar, Patna.
2. Superintending Engineer, South Bihar Circle, Building Construction Department, Patna.
3. Executive Engineer, Patliputra Building Division, Patna.
4. Accountant General, Officer of the Accountant General (A & E), Bihar, Patna.
5. Principal Secretary, General Administration Department, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. B. P. Pandey, Sr. Advocate Mr. Jagnath Singh and Mr. Rakesh Kumar, Advocates
For the State	:	Mr. Anil Kumar Sinha, G.A. 1
For the Accountant General (Respondent No. 4)	:	Mr. Kameshwar Prasad Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 21-11-2017

Heard Mr. B.P. Pandey, learned senior counsel along with Mr. Jaganath Singh, learned counsel for the petitioner and learned AC to GA-1 for the State.

2. The petitioner has moved the Court for the following reliefs:

(i) For issuance of writ in the nature of mandamus commanding upon the respondent authority in the nature of mandamus directing upon the respondent authorities for payment of Gratuity along with interest at the rate of 18% per annum on all the admitted dues of the petitioner for the period from the date the same became payable to the actual date of payment.

(ii) For issuance of writ in the nature of mandamus commanding upon the respondent authority to provide the benefit of IIIrd A.C.P., for which the petitioner is entitled, as the petitioner had already completed 30 years of his service on 01.06.2012 and the case of the petitioner for grant of IIIrd A.C.P. has already been referred by the Respondent No. 3 i.e. Executive Engineer, Patliputra Building Division, Patna to the Respondent No. 2 i.e. Superintending Engineer, South Circle, Building Construction Division, Patna vide letter no. 3143 dated 22.08.2013 and the same had been kept pending before the respondent no. 2.

(iii) For issuance of writ in the nature of mandamus commanding upon the respondent authority to enhanced the pension of the petitioner as per the recommendation of the pay revision after inclusion of IIIrd A.C.P. by the respondent no. 3 vide letter dated 22.08.2013.

(iv) For any other relief or reliefs the petitioner is found entitled in the facts and circumstances of the case.

(v) For quashing the office order contained in memo no. 3424 dated 29.04.2016, issued under signature of the Superintendent Engineer, South Bihar Circle, Building construction Department, Patna, whereby the first time bound promotion earlier granted to the petitioner has been cancelled and the benefit of the same will be granted from the passing of departmental account examination and excess payment shall be adjusted from the retiral dues or from the benefit of revised pension."

3. The brief facts of the case are that the petitioner was

initially appointed as Temporary Tracer in the year 1973 and thereafter in the year 1982, he was appointed as a Junior Accounts Clerk. He received his 1st and 2nd A.C.P. in the year 1999 and 2006 respectively. However, his 3rd A.C.P. was not granted till the time of his superannuation on 31.01.2015. Thereafter, by notification dated 29th April, 2016, he was granted benefit of 3rd A.C.P. but the same has not translated into actual payment.

4. Learned counsel for the petitioner submitted that without going into the details of his entitlement, since now he has superannuated, he would be satisfied if his pensionary benefits are fixed on the basis of his last pay drawn and without the respondents insisting of any recovery on the alleged ground that his appointment as Junior Accounts Clerk was not proper and accordingly, 1st and 2nd A.C.P. was also not proper.

5. Learned counsel for the State, on the basis of averments made in the counter affidavit filed, submitted that the petitioner was originally appointed as Temporary Tracer and his shifting of cadre and he being appointed as a Junior Accounts Clerk was not done in accordance with law and further that the same having been done, the A.C.P., which has been granted to him was not admissible and therefore, the excess amount drawn by him is recoverable.

6. Having considered the matter, without going into the issue of validity or legality or otherwise of the petitioner’s appointment as Junior Accounts Clerk, the Court is of the opinion that now, once the petitioner has superannuated and on his plea for grant of 3rd A.C.P., the authorities cannot become wiser and start digging up matters at such late stage. Once the petitioner having discharged the duty of Accounts Clerk and receiving benefits accruable thereof, upon his superannuation, the pensionary benefits have to be computed on the basis of the last pay drawn by him. Thus, to that extent, the Court would protect the emoluments received by him during his service period and any recovery proposed is held to be impermissible and if any order to such effect is passed, the same stands set aside. The Court is fortified in its view in light of the decision of the Hon’ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334**. Having said that, as has also been agreed by learned counsel for the petitioner, the pensionary benefits shall be calculated on the basis of his last pay drawn.

7. Accordingly, the authorities shall work out the final retiral dues of the petitioner and ensure that payment of the same is also made in the aforementioned terms within two months from the date of production of a copy of this order before the respondent no.

2. It goes without saying that if there has been any adjustment or recovery from the amount payable to the petitioner by way of pensionary benefits, the same shall be returned to him within the same period.

8. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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