

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5807 of 2011

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Chandrabilas Sharma aged about 62 years (Senior Citizen) son of Late Ramal Sharma, resident of Village- Supta, P.S.- Tekari, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Agriculture Production Commissioner-cum-Secretary, Department of Agriculture, Government of Bihar, Patna
2. The Divisional Commissioner, Magadh Division, District- Gaya
3. The District Collector, Gaya, District- Gaya
4. The Director Provident Fund, having his office in Pant Bhawan, Bailey Road, Patna
5. The District Provident Fund Officer, Gaya, District- Gaya
6. The Block Development Officer, Barachatti Block, P.S.- Barachatti, District- Gaya
7. The Block Development Officer, Paraiya Block, P.S.- Paraiya, District- Gaya
8. The Sub Divisional Officer, Sherghati, District- Gaya
9. The Sub Divisional Officer, Tekari, District- Gaya
10. The Accountant General (Accounts and Entitlement), Virchand Patel Patha, Patna.
11. The Treasury Officer, Gaya, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yugal Kishore, Sr. Adv.
Mr. Virendra Prasad, Adv.
Mr. Ugra Nath Mallik, Adv.
For the State : Mr. Sunil Kumar Pandey, A.C. to SC 14
For Accountant General : Mr. Mani Kant Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-02-2017

Heard Mr. Yugal Kishore, learned Senior Counsel for the petitioner, Mr. Sunil Kumar Pandey, learned A.C. to S.C.-14 and Mr. Mani Kant Mishra, learned counsel for the Accountant General.

2. The petitioner has filed the present writ application for payment of arrear of pension, gratuity, leave encashment, group



insurance, GPF and other retiral dues.

3. The facts of the case are not in dispute. While being posted as Jan Sevak at Barachatti Block in the district of Gaya, the petitioner retired on attaining the age of superannuation on 28th February, 2009. After superannuation, he submitted duly filled up pension application form before the authorities for payment of pension and other retiral dues. The Block Development Officer, Barachatti, Gaya sanctioned the payment of pension, gratuity and commutation of pension to the petitioner on 24th November, 2011. Immediately thereafter, the Accountant General, Bihar authorized the payment of gratuity and commuted value of pension on 8th December, 2011. Despite authorization of pensionary benefits in favour of the petitioner, the payment under different heads were not made to him for sufficiently long time.

4. From the affidavits filed on behalf of the parties, it would appear that the Treasury Officer, Gaya paid the pension, gratuity and part of the commuted value of pension to the petitioner almost three years after the authorization made by the Accountant General on 31st October, 2014. It would further appear that the Treasury Officer, Gaya requested the Bank to pay the pension to the petitioner from May, 2014.

5. It is submitted by the learned counsel for the petitioner



that the Treasury Officer, Gaya withheld the pension of the petitioner from 8th December, 2011 to April, 2014 without any rhyme or reason. He submitted that though the Accountant General, Bihar had authorized the payment of Rs.2,32,968/- as commuted value of pension, the Treasury Officer, Gaya paid only Rs.1,22,215/- to the petitioner on 31st October, 2014. He submitted that the payment of gratuity amount has also been made on 31st October, 2014.

6. In reply, learned counsel for the State submitted that as a matter of fact the petitioner was transferred from Paraiya Block to Barachatti Block on 2nd December, 2007 under the order of the District Magistrate, Gaya but he never joined as Jan Sevak at Barachatti Block till the date of his retirement on 28th February, 2009.

7. He submitted that the petitioner was made an accused in a criminal case lodged against him by the Block Development Officer, Paraiya being Paraiya P.S.Case No. 79 of 2007 registered under Sections 409, 420 and 120-B of the Indian Penal Code. In that case, his application for anticipatory bail was rejected by this Court pursuant to which he surrendered on 26th August, 2008 and remained in judicial custody till 26th November, 2008. Even after release on bail on 26th November, 2008, he did not join the service till the date of his retirement on 28th February, 2009.

8. He submitted that on the basis of last pay certificate



handed over by the Block Development Officer, Paraiya, payment of salary as well as retirement dues have been made to the petitioner. He submitted that in the last pay certificate it has been stated that as per letter no.70 of the Programme Officer, MANREGA, Paraiya dated 4th December, 2010, a sum of Rs.2,24,807/- stands due against the petitioner under different schemes of MANREGA and the same has to be adjusted from the petitioner.

9. Learned counsel for the State has also drawn my attention towards the counter affidavit filed on behalf of respondent no.11 Treasury Officer, Gaya wherein it has been stated that the Block Development Officer, Barachatti issued No Dues Certificate on 17th April, 2012. While issuing No Dues Certificate, he directed the Treasury Officer to recover Rs.2,24,807/- from the payable amount of the petitioner. He also directed that after recovering the amount, it should be sent to the Block Development Officer, Paraiya by cheque but since there is no provision in the Treasury Code for sending the amount through cheque, the Treasury Officer requested the Block Development Officer, Barachatti for clear instruction in this regard vide letter nos. 543 dated 9th May, 2012, 1639 dated 20th December, 2013 and 748 dated 18th June, 2014, but the Block Development Officer, Barachatti did not send any instruction in this regard. He stated that the petitioner requested for making monthly payment of



pension on 11th June, 2014 and at the request of the petitioner, on the same day, he sent the pension paper order to the Bank Manager, Bank of Baroda, Gaya vide letter no.47 dated 11th June, 2014. It is stated that as the Block Development Officer , Barachatti did not send any instruction in response to the letters sent by the Treasury Officer, he requested the Manager, Bank of Baroda for making payment of arrears of pension vide letter no. 953 dated 19th August, 2016 whereafter the Bank of Baroda credited the pension due of the petitioner for the period March, 2009 to April, 2014 amounting to Rs.6,11,675/- in his savings bank account after recovering due amount of Rs.2,24,807/-. It is also stated that the gratuity of the petitioner has been credited to his account on 31st October, 2014.

10. Referring to the aforesaid counter affidavit filed on behalf of respondent no.11, learned counsel for the State submitted that by now all the grievances of the petitioner have been redressed and hence no order is required to be passed in the present application.

11. Mr. Mani Kant Mishra, learned counsel for the Accountant General submitted that so far as the Accountant General is concerned, there is no lapses on his part. The moment sanction order reached the office of the Accountant General, immediately authority for payment of pension, gratuity and commuted value of pension was issued and any delay caused in the payment is not



attributable in any manner to the Accountant General.

12. In reply to the aforesaid submissions made by the learned counsel for the State, Mr. Yugal Kishore, learned Senior Counsel for the petitioner submitted that it is true that the petitioner was made accused in a criminal case and he had also to undergo imprisonment for certain period. However, the petitioner is not claiming any relief in respect of the period during which he was in custody. He submitted that immediately after release from custody, the petitioner joined his duties and salary has also been paid to the petitioner till the date of his retirement. He submitted that the criminal case instituted against the petitioner also ended into acquittal vide judgment dated 24th May, 2012 passed by the learned Judicial Magistrate 1st Class, Gaya. A copy of the judgment has been produced by him in course of argument. Let the same be kept on record.

13. Mr. Yugal Kishore, learned Senior Counsel submitted that simply because the petitioner was made accused in a criminal case, the same would not confer any right upon the respondents to withhold the pensionary benefits especially when the pension payment order was issued and the payment was authorized by the Accountant General. He submitted that the delay caused in payment of the retiral dues of the petitioner is culpable in nature and for this



the petitioner needs to be suitably compensated by way of payment of interest. He submitted that so far as the allegation regarding dues of Rs.2,24,807/- against the petitioner is concerned, no disciplinary proceeding was ever initiated against him while he was in service, and even after his retirement, no action for withholdment of pension has been taken against him under the Bihar Pension Rules.

14. Countering the submission of the learned Senior Counsel for the petitioner, learned counsel for the State submitted that the delay, if any, in payment of retiral dues would not entitle the petitioner for payment of interest, as he was made accused in a criminal case and if he has already been acquitted in the criminal case, he may approach the authorities for release of Rs.2,24,807/- which has not been paid to him so far on account of charges in the criminal case.

15. I have heard learned counsel for the parties and perused the record.

16. From the pleadings of the parties, the admitted facts are as under :-

- (a) The petitioner retired from service on attaining the age of superannuation on 28th February, 2009.
- (b) After receiving the pension application form, the Block Development Officer, Barachatti sent sanction order of



pension, gratuity and commuted value of pension to the Accountant General, Bihar, Patna on 24th November, 2011.

- (c) The Accountant General, Bihar, Patna authorized payment of pension, gratuity and commuted value of pension on 8th December, 2011. The office of the Accountant General also communicated the authorization made by his office to the Block Development Officer, Barachatti, Treasury Officer, Gaya and the petitioner.
- (d) The pension dues of the petitioner for the period March, 2009 to April, 2014 amounting to Rs.6,11,675/- was credited in the savings account of the petitioner after recovery of Rs.2,24,807/- on 19th August, 2016.
- (e) The regular payment of pension of the petitioner started from the month of May, 2014.
- (f) Only part of the commuted value of pension was paid to the petitioner on 31st October, 2014. It is not known whether the remaining part of Rs.1,10,753/- has been paid to the petitioner or not.
- (g) Though the gratuity was authorized for payment by the Accountant General, Bihar, Patna on 8th December, 2011, the payment of the same was made to the petitioner on



31st October, 2014.

17. The aforesaid admitted facts would clearly demonstrate that there is an inordinate and unexplained delay in making payment of retiral benefits to the petitioner.

18. Though a plea has been taken by the State that since the petitioner was made accused in a criminal case and there was dues of Rs.2,24,807/- against him, the delay in payment of retiral dues, if any, was attributable to the petitioner himself, the same does not appeal this Court.

19. It is not the case of the respondents that any disciplinary proceeding was initiated against the petitioner for any misconduct while he was in service. He was allowed to retire on due date i.e. 28th February, 2009. Even after his retirement, no proceeding was ever initiated against him under the Bihar Pension Rules for withholdment of pension. Under such circumstances, the respondents were not justified at all in delaying the payment of retiral dues to the petitioner. Non-payment or delayed payment of retiral dues not only tantamount to denial of an individual's right to property, but is also violation of human rights of the victim and his family members whose livelihood is affected resulting in poverty and starvation.

20. Pension or retirement benefits payable at the time of retirement is to be made on the day of retirement or within a



reasonable time period. If there is inordinate delay for no fault on the part of the employee, interest has to be paid on delayed payments.

21. The Bihar Pension Rules, 1950 with Appendices deals with Rules applicable to all Government servants appointed to services and posts in connection with affairs of the State, which are borne on pensionable establishments. The Rules provide for submission of signed application by the pensioner to the Office of the Accountant General through his Department. After processing the application of the pensioner, the Department is required to forward the pension proposal of the pensioner to the Accountant General and on receipt of the application and after verification of the proposal, the Accountant General authorizes pensionary benefits in Pension Payment Order (for pension), Gratuity Order (for gratuity) and Commutation Order (for commutation of pension). The established procedure is that the Accountant General authorizes the payment orders in three copies. The first copy is sent to the Treasury, the second copy is sent to the pensioner and the third copy is sent to the Department. Once the authorization for payment is made, the Treasury Officer is duty bound to pay the pensioner the payable amount on production of the intimation received from the Accountant General.

22. It is well settled that in absence of any provision in the



pension rules, the State Government cannot withhold a part of pension or other retiral dues.

23. Once the Accountant General had authorized payment of pension, gratuity and commuted value of pension of the petitioner on 8th December, 2011, there was no occasion for the respondents to either delay the payment or withhold the part of the amount authorized for payment on the ground of pendency of a criminal case.

24. As recorded hereinabove, there is no explanation as to why there was delay of almost two years in sanctioning the pension of the petitioner. There is also no explanation as to why despite there being authorization by the Accountant General, payment under different heads was not released to the petitioner for a sufficiently long time.

25. The contention of the petitioner that neither any disciplinary proceeding was initiated against him in respect of the defalcation of any amount while he was in service nor any proceeding under the Bihar Pension Rules, 1950 has been initiated against him after his retirement for withholdment of pensionary rights has not been disputed by the learned counsel for the State. Thus, the impugned action on the part of the respondents whereby they have withheld certain retiral benefits of the petitioner is wholly unjustified.

26. In *State of Jharkhand & Ors. Vs. Jitendra Kumar*



Srivastava & Anr. [(2013) 12 SCC 210], the Supreme Court observed that the gratuity and pension are hard earned benefits of an employee and right to receive pension is in the nature of “property”.

27. 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.

28. 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.”

29. 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.”

30. 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.

31. The pension or gratuity being no longer bounty, the Supreme Court crystallized 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.”

32. 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 considered opinion of this Court, there is no justification for retaining the pension dues of the petitioner amounting to Rs.6,11,675/- after the payment was authorized by the Accountant General, Bihar, Patna on 8th December, 2011. There is also no



justification for non-payment of Rs.2,24,807/- out of the aforesaid amount of Rs.6,11,675/-. I also find no justification for non-payment of part of commuted value of pension after its authorization by the Accountant General, Bihar, Patna on 8th December, 2011. Similarly, there is no justification as to why only part of the payments of the commuted value of pension was made and that too on 31st October, 2014 after being authorized by the Accountant General, Bihar, Patna on 8th December, 2011. There is also no justification as to why the payment of gratuity was made to the petitioner on 31st October, 2014 when it was authorized by the Accountant General, Bihar, Patna on 8th December, 2011 itself.

33. Looking to the facts of the case, I direct the State respondents to pay interest at the rate of 8% per annum over the amount of retiral dues like pension, gratuity and commuted value of pension with effect from 8th December, 2011 till the date of their actual payment. The above respondents shall also release part of the commuted value of pension and the amount of Rs.2,24,807/- which have been retained by them illegally with interest at the rate of 8% per annum to be calculated from 8th December, 2011 till the date of their actual payment.

34. The respondent State shall be at liberty to realize the amount of interest from the officer/officers responsible for the delay



caused in making payment of pension, gratuity and commuted value of pension to the petitioner in accordance with law.

35. With the aforesaid observations and directions, the writ application is disposed of.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	21-02-2017
Transmission Date	

