IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15901 of 2011

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Yugal Kishore Prasad, son of Sheo Nandan Prasad, resident of Village & Post- Kalyanpur, P.S.- Bidupur, District- Vaishali, at Present residing at Om Kunj, Chitragupta Marg, P.O.- G.P.O., P.S.-Jakanpur, District-Patna

.... Petitioner

Versus

1. The Bihar State Road Transport Corporation through its Administrator, Pariwahan Bhawan, Birchand Patel Path, Patna
2. The Administrator, Bihar State Road Transport Corporation through its Administrator, Pariwahan Bhawan, Birchand Patel Path, Patna
3. The Chief Accounts Officer-cum-Financial Advisor, Bihar State Road Transport Corporation through its Administrator, Pariwahan Bhawan, Birchand Patel Path, Patna
4. The Accounts Officer, Bihar State Road Transport Corporation through its Administrator, Pariwahan Bhawan, Birchand Patel Path, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. R.K. Verma, Sr. Advocate.
Mr. Ratnesh Kumar Singh, Advocate.

For the Respondents : Mr. Mukul Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 01-08-2017

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for setting aside the entire departmental proceeding including impugned order dated 01.01.2005 issued under the signature of Administrator, Bihar State Road Transport Corporation vide Memo No. 9 dated 01.01.2005 (Annexure-5); for payment of interest on the amount withheld/ recovered out of the retiral dues of the petitioner; and for consequential reliefs.

3. The short facts of the case according to the petitioner are that he was appointed as Junior Clerk on 29.11.1964 in the Bihar State Road Transport Corporation ("the Corporation" hereinafter) and ultimately retired from the post of Senior Selection Grade Clerk on 30.11.2002 without any departmental proceeding having been initiated against him during his service tenure. The petitioner after superannuation was paid certain amounts enumerated in paragraph 5 of the writ petition and the total payment came to approximately 60% of the total retiral dues. Pursuant to a public notice, the petitioner approached the Corporation for payment of 60% of the Contributory Provident Fund but was informed that the same had been withheld. The petitioner came to know through Right to Information application that an order dated 01.01.2005 (Annexure-5) had been passed in terms of which 25% of the petitioner's retiral dues had been withheld.

4. Mr. Rajiv Kumar Verma, learned senior counsel appearing on behalf of the petitioner, raises a three-fold submission as follows:

(i) The provisions of Rule 43(b) of the Bihar Pension Rules are not applicable in the case of employees of the Corporation and hence withholding/recovery of the retiral dues of the petitioner under the said provision is wholly illegal and unsustainable. He relies on the decision of this Court in C.W.J.C. No. 4159 of 2001 (*Baikunth Tiwary Vs.*

Bihar State Road Transportion Corporation and others), affirmed in LPA No. 686 of 2001 (*The Bihar State Road Transport Corporation through its Administrator, Bihar State Road Transport Corporation Ltd, Patna Vs. Baikunth Tiwary*) and thereafter Civil Appeal No. 5299 of 2011 (*Bihar State Road Transport Vs. Baikunth Tiwary)* was also dismissed against the said LPA, however, keeping the questions of law open. He further relies on a decision of a co-ordinate Bench of this Court in C.W.J.C. No. 518 of 1999 and analogous case (*Bachchan Prasad Singh Vs. The Bihar State Road Transport Corporation & Ors.).*

(ii) Without prejudice, the provisions of Rule 43(b) are not applicable on the face of it. The proceeding has been initiated well after superannuation of the petitioner on 30.11.2002 and in respect of events of the year 1996 and hence beyond the limitation period of 4 years prescribed thereunder. Such action was initiated in the backdrop of the order dated 22.01.1996 passed in C.W.J.C. No. 773 of 1995(R) in the case of one Sheo Janam Rai, wherein a direction had been given for payment of interest @ 15% per annum on the amount of arrears to be paid to the said applicant. It was alleged that liability for such interest was attributable to inaction on the part of the petitioner.

(iii) From the order passed in the case of Sheo Janam Rai pursuant to disposal of C.W.J.C. No. 773 of 1995 (R) aforesaid, it transpires that in fact no payment of interest was made to Sheo Janam Rai in absence of any provision for such payment of interest under the package approved by the Apex Court. Thus, the question of any loss having arisen to the employer did not arise, much less as sought to be recovered from the petitioner.

5. Learned counsel for the respondent Corporation, on the other hand, submits on the basis of the counter affidavit that the said Sheo Janam Rai, another employee of the Jamshedpur Depot of the Corporation, had overstayed in service till 22.04.1994 much beyond the due date of superannuation in collusion with one Yamuna Prasad Bhagat, the latter having been relieved from service. It is further submitted that as far as applicability of Rule 43(b) of the Bihar Pension Rules in respect of the employees of the Corporation is concerned, this question of law was kept open by the Apex Court in Civil Appeal No. 5299 of 2011. So also, the judgment of learned Single Judge in C.W.J.C. No. 518 of 1999 has been kept in abeyance by order dated 15.10.2015 in LPA No. 1864 of 2015. It is also submitted that no fault can be found with the action of the respondent Corporation for withholding retiral dues of the petitioner as even though the petitioner is not entitled to monthly pension, the term 'pension' as defined in Rule 27 of the Bihar

Pension Rules includes gratuity out of which recovery may be made.

6. Having heard learned counsel for the parties and on a consideration of the materials on record, this Court is of the view that the matter can be decided on the question of limitation as raised in the second submission made on behalf of the petitioner. It has been contended that Rule 43(b) proviso (a) (ii) mandates that there is an inflexible period of limitation prescribed for institution of proceedings for recovery. Even according to the respondents' counter affidavit, the event relating to Sheo Janam Rai who had overstayed in service upto 22.04.1994, is clearly well beyond the period of limitation of 4 years as the proceedings under Rule 43(b) have been initiated after the petitioner's superannuation in the year 2002. Learned counsel for the respondent Corporation could also not point to any event within the stipulated period of the preceding 4 years in order to defend the initiation of proceedings with reference to the period of limitation.

7. The contention of the petitioner on this ground is thus fit to be accepted and sufficient for grant of relief without going into the merits of the other submissions with reference to the applicability of Rule 43(b) of the Bihar Pension Rules in the case of employees of the Corporation or whether any recovery could be made in absence of any loss having been suffered by the Corporation.

8. The impugned order dated 01.01.2005 (Annexure-5) is accordingly set aside with a direction to the respondent Corporation

to make payment of the retiral dues and any other amounts due to the petitioner to the extent withheld/recovered from him pursuant to the impugned order, in accordance with terms of the approved package, expeditiously and without undue delay. For this purpose, the petitioner shall be at liberty to represent before the Administrator, Bihar State Road Transport Corporation, Patna (respondent no. 2). If any such representation is filed within a period of two weeks from today, the same shall be disposed of after grant of opportunity of hearing to the petitioner in accordance with law within a further period of one month thereafter.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
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