IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6772 of 2014

Bir Bhanjan Singh son of Late Ijat Singh, resident of village - Piyania, P.S.- Udwantnagar, District - Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Rural Development Department, Bihar, Patna
3. The Engineer-in-Chief, Rural Department, Bihar, Patna
4. The Executive Engineer, Rural Development, Special Division, Rohtas at Sasaram
5. The Commissioner-cum-Secretary, Water Resources Department, Bihar, Patna
6. The Engineer-in-Chief, Water Resources Department, Bihar, Patna
7. The Engineer-in-Chief, Water Resources Department, Central, Bihar, Patna
8. The Chief Engineer, Water Resources, Dehari, Rohtas
9. The Superintending Engineer, Sone Canal, Anchal, Arrah, Bhojpur

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Kishore Singh, Advocate
: Mr. Satyapal Singh, Advocate

For the State : Mr. Upendra Pratap Singh, A.C. to S.C.-4

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-03-2017

In the present writ application the petitioner has challenged the order dated 03.08.2010 passed by the Engineer-in-Chief (Central), Water Resources Department, Bihar, Patna.

2. By the aforesaid order dated 03.08.2010, the claim of the petitioner for payment of leave encashment has been rejected by passing a reasoned order on the ground that the petitioner was absent from duty between 01.03.1999 and 11.05.2003 and the leave for the aforesaid period sanctioned by the Superintending Engineer, Rural

Development, Special Circle, Patna was totally without jurisdiction. It is stated that sanction of leave could have been granted by the Finance Department of the State Government, as the petitioner absented from duty for over 180 days. It is also mentioned in the impugned order that since the petitioner did not hand over the charge, the State suffered a loss of Rs.2,00,775/-, which amount is recoverable from him.

3. It is submitted by the learned counsel for the petitioner that the petitioner retired from service on attaining the age of superannuation on 31st January, 2004 from the post of Assistant Engineer, Sone Canal Circle, Arrah. Since the amount of leave encashment was not paid to him, a writ application vide C.W.J.C. No.7749 of 2005 was filed before this Court. After hearing the parties, vide order dated 31.07.2009, this Court directed the petitioner to file a fresh detailed representation before the respondent no.6 enclosing the copy of the relevant documents, if any, in support of his claim along with certified copy of the order within a period of four weeks and in case of filing of such representation, the respondent no.6 was directed to consider the grievances of the petitioner raised in the representation in accordance with law and dispose of the same by a reasoned order within a period of four months. He submitted that thereafter the petitioner filed a representation before the respondent no.6 and after examining the claim of the petitioner, the aforesaid impugned order was passed on 3rd August, 2010.

4. Learned counsel for the petitioner contended that since the petitioner has already retired and no proceeding was initiated against him while he was in service or even after his retirement, no recovery can be made from the retiral dues of the petitioner. He further submitted that since the period of absence from 01.03.1999 to 11.05.2003 had already been sanctioned and regularized under the orders of the Superintending Engineer, Rural Development, Special Circle, Patna the respondents could not have reopened the matter and stated that the said regularization was bad in law in order to deny his claim for leave encashment.

5. on the other hand, learned counsel for the State submitted that the Superintending Engineer had illegally approved the leave of the petitioner from 01.03.1999 to 11.05.2003 and the order passed by him was absolutely without jurisdiction for which a departmental action has already been initiated against the then Superintending Engineer. He stated that since the sanction of leave of the petitioner for over four years was found inadmissible, the petitioner is not found entitled to receive leave salary as claimed in the present writ application.

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

7. Chapter VI of the Bihar Service Code (for short 'the Code') deals with the provision of leave. It has been divided into several sections. Part 1 of Section IV contains the heading "Grant of Leave".

8. At this stage, it is necessary to refer some of the provisions of the Code under which extraordinary leave may be granted to a Government servant. Rule 180 in Section IV is as under:-

> "**180.** (a) In special circumstances and when no other leave is under these rules admissible, extraordinary leave may be granted. Such leave is not debited against the leave account. No leave-salary is admissible during such leave.
>
> (b) The authority empowered to sanction leave may grant extraordinary leave in combination with, or in continuation of, any leave that is admissible, and may commute retrospectively period of absence without leave into extraordinary leave.
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> Note 1.- The State Government may for special reasons dispense with the condition that extraordinary leave may be granted only when no other leave is by rule admissible, provided that a Government servant cannot be compelled to take extraordinary leave when leave with allowances is admissible to him.
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> Note 2.- The power of commuting period

> of absence without leave into extraordinary leave under sub-rule (b) is absolute; in other words, such commutation is permissible even when other leave was admissible to Government servant at the time his absence without leave commenced."

9. Further, Rule 236 in Section VIII refers to the conditions under which extraordinary leave may be granted. It reads as under:-

> "**236.** Extraordinary leave may be granted to a Government servant in special circumstances:-
>
> (i) when no other leave is admissible under these rules;
>
> (ii) when, other leave being admissible, the Government servant concerned applies in writing for the grant of extraordinary leave.

10. From a reading of Rules 180 and 236 of the Code, it would be evident that Rule 180 permits the grant of extraordinary leave in special circumstances, when no other leave is admissible whereas the second circumstance of Rule 236 deals with the circumstance when the employee applies for grant of extraordinary leave when leave is admissible.

11. An employee can avail leave while in service under different provisions of the aforesaid Section IV of Part I of the Code. An employer is not entitled to grant leave for an unlimited period. The leave which is not due may be granted to an employee subject to certain conditions such as (i) on medical certificate without limit of amount and (ii) otherwise than on medical certificate, for not more than three months at any one time and six months in all, reckoned in terms of leave on average pay.

12. The provisions under the Code also provide the competent authority to commute leave. In case an employee goes on leave beyond a period of six months, leave can only be granted by the Finance Department of the State.

13. Apparently, in the present case leave of the petitioner for over three years has been commuted under the orders of the Superintending Engineer, who was not competent to commute such leave. Accordingly, I see no merit in the claim of the petitioner for grant of leave salary. However, the contention of the petitioner that the respondents would not be entitled to recover any amount from the retiral benefits of the petitioner seems to be correct. It is an admitted fact that while the petitioner was in service neither any departmental proceeding nor any judicial proceeding was initiated against him. Even after his retirement on 31st January, 2004, no proceeding has been initiated against him under the Bihar Pension Rules. In absence of any departmental proceeding or judicial proceeding, the respondents should not be competent to suo motu decide recovery of the amount from a retired employee.

14. In that view of the matter, the impugned order dated 03.08.2010 to the extent whereby it is decided to recover Rs.2,00,775/- from the petitioner is bad in law and is accordingly set aside. The writ application is partly allowed. In case any amount is withheld by the respondents in order to recover the aforesaid amount of Rs.2,00,775/- the same should be paid to the petitioner within a period of one month.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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