

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5240 of 2017

Along with

Interlocutory Application No. 8508 of 2017

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Bhaglu Yadav Son of Bishun Yadav, Resident of Village- Prasadi English, P.S.+
Anchal- Arwal, District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Dept., Govt. of Bihar, Patna.
2. The Principal Secretary, Home Dept. Govt. of Bihar, Patna.
3. The District Magistrate, Arwal District- Arwal.
4. The Superintendent of Police, District- Arwal.
5. The Anchaladhikari, Arwal, District- Arwal.
6. The Provident Fund Officer, District- Arwal.
7. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sharda Nand Mishra with Mr. Deepak Kumar, Advocates
For the State	:	Mr. Suman Kumar Jha, AC to AAG 3
For the A.G.	:	Mr. Raghwanand, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 11-12-2017

Heard learned counsel for the petitioner; State and
Accountant General.

2. The petitioner has moved the Court for payment of
retiral benefits treating his date of superannuation to be 31.08.2016.

3. Learned counsel for the petitioner submitted that he
was appointed as *Chowkidar* which was not a service under the
Government prior to 1990 when the State came out with the policy to



take over the service of *Chowkidars*. It was submitted that the petitioner at the relevant time had to undergo test by the Medical Board which has opined that as on 20.08.1989 he was aged 33 years and, thus, was required to superannuate on 31.08.2016 which he did. It was submitted that once the authorities have sent him for medical examination and a report is there, the opinion is binding on the parties, including the authorities.

4. By way of Interlocutory Application No. 8508 of 2017, the petitioner has challenged the order contained in Memo No. 2413 dated 25.03.2017 by which the respondent no. 5 has directed for recovery on account of payment made to the petitioner of salary, gratuity and leave encashment which was paid for the excess period for which he has worked, i.e., about one year.

5. Learned counsel for the petitioner submitted that once the petitioner has been allowed to work till 31.08.2016, he is entitled to all such benefits, including counting of the said period, for pensionary benefits. It was submitted that the petitioner was subjected to a Medical Board by the authorities and once a report has come, the petitioner has to be treated in terms of the report of the Medical Board, which clearly entitles him to be in service till 31.08.2016. Learned counsel further submitted that for the period the petitioner has worked, the authorities are obliged to pay salary. Learned counsel



for the petitioner submitted that C.W.J.C. No. 6013 of 2012 was filed for salary as after 31.10.2011 he was not being paid.

6. Learned counsel for the State submitted that in the service book, his date of birth was clearly written as 11.10.2015 and there is only an endorsement with regard to the report of the Medical Board, but when the date of birth itself is given, the Medical Board would not override the same for the reason that the Medical Board was constituted only for verifying as to whether the person was overage on 31.12.1989 in terms of the Government Policy No. 359 dated 17.01.1990 by which the *Chowkidars* were made Government Servant. It was submitted that the purpose of the Medical Board was only to ascertain as to whether the person was above the age of 50 years, for the policy itself debarred any person to become a Class IV Government Servant if he had crossed the age of 50 years on 31.12.1989. Learned counsel submitted that the said fact was known to the petitioner and, thus, he was due to superannuate with effect from 31.10.2010 and could not have continued beyond the said period but somehow he managed to continue for another year and finally after 31.10.2011 he has not been paid. It was submitted that the petitioner had in fact applied for voluntary retirement on 16.07.1914 seeking employment of his son in his place but the same was finally rejected. Learned counsel submitted that though the petitioner claims



to have worked till 31.08.2016, but there is no record to show such work and payment, for which the petitioner had filed C.W.J.C. No. 6013 of 2012 which was permitted to be withdrawn by order dated 20.04.2012. Learned counsel further submitted that the authorities have sought recovery of salary, gratuity and leave encashment drawn by the petitioner for the extra period of one year.

7. Having considered the matter, the Court does not find any merit in the writ petition to the extent of claim for full pensionary benefits to the petitioner treating his service till 31.08.2016. Once the date of birth of the petitioner has been written in the official records as 11.10.1950 which was never objected by the petitioner, he cannot claim any benefit of any subsequent Medical Board which was constituted for a different reason and not for ascertaining the date of birth but as to whether he had crossed the age of 50 years as on 31.12.1989. Moreover, the petitioner has worked only for one more year, i.e., till 31.10.1911 for which payment has been made and then not having got salary, there cannot be any direction for payment of the same and further, him having withdrawn the earlier C.W.J.C. No. 6013 of 2012 concludes the issue, which cannot be re-opened. Further, the authorities cannot be faulted if they readjust the amount paid to the petitioner counting his service till 31.10.2010 and discarding the excess period of one year for which he has worked,



notionally for computing the retiral benefits. Thus, the authorities are held entitled to exclude the period for which the petitioner's service has been taken for consideration while computing his retiral benefits beyond 31.10.2010. The same shall be restricted to computation of his gratuity, fixation of pension and encashment of unutilized earned leave. As far as payment of actual salary is concerned, as it is not in dispute that the petitioner worked on the post and the authorities took work from him, for which he has been paid his salary, the same cannot be recovered as the authorities cannot deny payment of work taken.

8. Accordingly, the writ petition stands disposed off by holding the petitioner entitled to the salary which he has drawn after working on the said post but, with regard to the payment of all other retiral benefits including pension, gratuity, earned leave etc., the length of service of the petitioner would be counted only till 31.10.2010. To that extent, whatever excess has been paid, shall be recalculated and adjusted from payable dues of the petitioner, if still remaining, or in the alternative, shall be adjusted from his remaining dues including pension. If the same is adjusted from his pension, it would be done over a period of time in instalments so as to ensure that the petitioner does not face hardship on account of total stoppage of his pension.



9. Learned counsel for the State submitted that the petitioner has not submitted the filled up pension papers. However, learned counsel for the petitioner submitted that the same has been done.

10. Be that as it may, if the filled up pension papers have not been submitted by the petitioner, the same shall be done within two weeks from today.

11. Upon the same being done, the authorities shall ensure that the payment is made to the petitioner in terms of the present order expeditiously and latest within two months from the date of production of a copy of this order before the respondent no. 5.

(Ahsanuddin Amanullah, J)

Anjani/-

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