

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8676 of 2018

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Chandra Mohan Singh, Son of Sri Lalan Singh, Resident of House No. N-11/58A-H, Ranipur, Police Station Bhelupur, District Varanasi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Bailey Road, Patna. Govt. of Bihar, Patna.
2. The Principal Secretary, Finance Department Old Secretariat, Patna.
3. The Chief Engineer, Water Resources Department, Bihar Sharif, Naralda.
4. The Superintending Engineer, Sinchai Circle, Water Resources Department, Nawadah.
5. The Executive Engineer, Sinchai Division, Water Resources Department, Nawadah.
6. The Treasury Officer, Nawadah.
7. The Accountant General, (Accounts and Entitlement), Bihar, Birchand Patel Marg, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rupak Kumar, Adv.
For the State		Mr. Vikash Kumar- SC-11
		Mr. Sriram Krishna, A.C. to S.C.-11
For the A.G.	:	Mr. Shiv Kumar, Adv.

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT

Date : 11-12-2018

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel appearing on behalf of the Accountant General, Bihar, Patna.

Petitioner who retired from the post of Junior Engineer from the office of the respondent no. 5, the Executive Engineer, Irrigation Division, Water Resources Department, Nawada on 31.01.2016 prays for payment of pension, gratuity, leave encashment and statutory and panel interest over his pensionary benefits.



A counter affidavit has been filed on behalf of the respondent no. 5, the Executive Engineer, Irrigation Division, Water Resources Department, Nawada stating therein that while the petitioner was posted at Dumka Irrigation Division, shortage of materials valued at Rs. 92,003.75 is required to be recovered from the petitioner. It has also been submitted that while the petitioner was posted at Bijikhorwa Irrigation Division, a sum of Rs. 25,901/- had been given to the petitioner as advance but the same has not yet been reconciled. It has further been submitted in the said counter affidavit that the service book of the petitioner has not yet returned from his earlier place of posting for which communications are being made. From perusal of the counter affidavit, it appears that the petitioner was posted as Junior Engineer, Irrigation Division, Dumka for the period between 01.11.1999 to 31.07.2000 and at Irrigation Division Bijikhorwa between 01.06.2001 till 14.10.2004 as is evident from the service record of the petitioner as annexed as Annexure-A to the counter affidavit.

Learned counsel for the petitioner submits that no departmental proceeding was initiated against the petitioner for shortage at Dumka Irrigation Division or Bijikhorwa Irrigation Division at any point of time and from Dumka he was



transferred to Jamui Irrigation Division on 01.08.2000 after handing over charge then to Bijikhorwa Irrigation Division on 01.06.2001 and on 19.10.2004 he was transferred to Nawada from where he retired from the post of Junior Engineer on 31.01.2016. The shortage of materials at Dumka was never made known to him either when he was posted as Junior engineer at Dumka Irrigation Division nor the advance which is alleged to have not been reconciled by the petitioner at Bijikhorwa Irrigation Division was ever communicated to the petitioner and after two years of his retirement the said allegation has been made against the petitioner. He further submits that after giving all the charges at his earlier places of posting i.e. at Dumka and Bijikhorwa the petitioner was transferred thereafter to Nawada on 19.10.2004 from where he retired and no such allegation was ever made against the petitioner during his service tenure nor after his retirement which has come to his knowledge by the present counter affidavit. Learned counsel for the petitioner has filed a rejoinder to the said counter affidavit stating therein that the letter showing shortage of materials worth Rs. 92,003.75/- has been stated in the letter dated 24.08.2017 much after his retirement and also the dues by way of advance of Rs. 25,901/- has also



been not communicated either to the respondent no. 5 or to the petitioner till his superannuation. He further submits that even the provisional pension which he had been receiving has been stopped with effect from September 2018.

Learned counsel for the petitioner submits that no proceeding has been initiated against the petitioner either before his retirement of an event of the year 1999-2000 and 2004 and his pensionary benefits have been withheld without any reason. He placed reliance in the case of **Smt. Shanti Choubey Vs. The State of Bihar & Ors. since reported in 2004 (4) PLJR 236** stating therein that recovery of the alleged outstanding advance and not handing over of charge of material of his previous posting which was way back in the year 1999-2004 for which neither any departmental proceeding was initiated after such long period is not justified and permissible and he further relies on the Apex Court judgment in the case of **State of Punjab & Anr. Vs. Rafiq Masih (White Washer) & Ors. since reported in (2015) 4 SCC 334** that recovery after retirement would be impermissible in law and specifically referred to para-18 where the Apex Court has laid down certain situations. The recovery would be inequitable and harsh and also arbitrary as no departmental proceeding having been initiated for the materials



of the year 1999 and advance of the year between 2001 to 2004, the pensionary benefits of the petitioner cannot be withheld.

From perusal of the counter affidavit filed on behalf of the respondent no. 5, it appears that the charge of the materials which were not handed over is enclosed with the letter dated 24.08.2017 annexed at Annexure-B which specifies the list of auctionable material after expiry of useful life. The petitioner was posted at Dumka between 01.11.1999 till 31.07.2000. Thereafter he was transferred to various places like Jamui, Bijikhorwa and Nawada from where he retired. The respondent authorities never quantified the materials which were not handed over by the petitioner which relates to the period 1999-2000 and after his retirement, the same has been quantified and that too which was auctionable material after expiry of useful life. The advance of Rs. 25,901 which was alleged to be the advance given while the petitioner was posted at Bijikhorwa also related to the period 2001-2004 and was never informed to the petitioner before his retirement.

Counsel for the State on being asked specifically whether a departmental proceeding has been initiated or what action has been taken for recovery of alleged outstanding against the petitioner, there was no answer. The pensionary



benefits of the petitioner cannot be withheld after retirement without there being any departmental proceedings against him as held in the case of **Smt. Shanti Choubey** (supra). Even recovery after retirement of an employee of class III is impermissible in view of the Apex Court Judgment in the case of **Rafiq Masih** (supra).

Considering the said facts, the recovery being impermissible without any punishment order, the respondent no. 5, the Executive Engineer is directed to make payment of the retiral dues of the petitioner within a period of two months from the date of receipt/production of a copy of this order.

Writ application is accordingly allowed.

(Nilu Agrawal, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2018
Transmission Date	NA

