

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 19996 of 2014

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Arun Kumar Tripathy, Son of Late Ram Naresh Tripathy, Resident of 201, X Block
Lekhraj Parisar, Road No.3, Patel Nagar, Patna-23, District: Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Social Welfare Department, Government of Bihar, Patna.
2. The Director Primary School Education Department, Government of Bihar, Patna.
3. The District Magistrate, Gaya, Primary Education Department, Government of Bihar.
4. The Regional Deputy Director, Magadh Division, Gaya.
5. The District Education Officer, Gaya.
6. The District Superintendent of Education, Gaya.
7. The District Provident Fund Officer, Gaya.
8. The Head-Master, Middle School Chand Chaura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dudh Nath Singh, Advocate
For the State : Mr. Ramadhar Singh, G.P. 25

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-03-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following

reliefs:

“i) For issuance of direction or order or writs in the nature of mandamus for commanding the respondent authorities to make payment of entire legal dues with statutory interest as well as penal interest to the petitioner laying against his deceased father namely late Ram Naresh Tripathy then Head master New Middle school Chand Chaura, Nagar Nigam Gaya, who died on 29.10.1994.

ii) For any other relief for which the petitioner is found legally entitled to under the facts and circumstances of this case.”



3. The father of the petitioner was working as Incharge Headmaster of New Middle School, Chand Chaura under Gaya Municipal Corporation. He was suspended sometime in the year 1994 and soon thereafter, he died in harness on 29.10.1994. The petitioner had informed the authorities on 03.06.2000. The petitioner took the matter relating to post retiral dues of the father with the authorities on 29.09.2001, after which suspension was revoked but retiral dues were still not paid and the petitioner moved in the present writ application.

4. During the pendency of the writ application, the amounts have been paid. However, the petitioner claims interest on delayed payment.

5. Learned counsel for the petitioner submitted that upon the death of his father, departmental proceeding was continuing and before its completion, his father passed away. Learned counsel submitted that as no order can be passed against a dead person, the departmental proceeding had to be concluded and payment made to the heirs of the deceased Ram Naresh Tripathy i.e., the father of the petitioner. It was submitted that the late employee died leaving behind three sons and the petitioner is the youngest son and the elder two have filed affidavit authorizing the petitioner to receive the due payment of their father. Learned counsel submitted that statutory



interest has not been paid and further, penal interest be also awarded. Learned counsel has relied upon a decision of this Court in the case of **Sharda Devi vs. Union of India** reported as **2015(4) BBCJ V-3**, which has been affirmed by a Division Bench in L.P.A. No. 335 of 2016 dated 23.03.2017. Learned counsel relied upon another decision in the case of **Most. Nirmala Singh vs. State of Bihar** reported as **2018(1) PLJR 366**, for the proposition that delayed payment would entitle the employee or his heirs to interest. He also relied upon the decision of the Hon'ble Supreme Court in the case of **D. D. Tewari v. Uttar Haryana Bijli Vitran Nigam Ltd.** reported as **(2014) 8 SCC 894**, for the same proposition.

6. Learned counsel for the State submitted that the father of the petitioner was posted as Headmaster-cum-D.D.O. of New Middle School, Chand Chaura, Nagar Nigam Gaya in the year 1991 and, thus, was the custodian of the service book which was not found by the State authorities. It was further submitted that Group Insurance was sanctioned on 30.07.2001 and revalidated on 05.12.2015 and similarly subsistence allowance was also sanctioned on 23.07.2001 and revalidated on 05.12.2015. It was submitted that as no records were available with regard to the service of the father of the petitioner, he was called upon to furnish whatever papers he had and upon him submitting the same, the authorities have made the



payment after reconstructing the service book.

7. Having heard learned counsel for the parties, in view of the fact that all admissible dues of the late father of the petitioner has been paid to him, may be during the pendency of the writ application, the writ petition has served its purpose. As far as interest is concerned, when there is no rebuttal to the fact that the late father of the petitioner was the Drawing and Disbursing Officer and the custodian of the service book and the same was not available and thereafter upon papers being submitted by the petitioner, service book was reconstructed and also that in the year 2001 itself, the amount of Group Insurance and subsistence allowance have been sanctioned, when the original beneficiary and also his wife is no more, the Court is not inclined to grant any separate interest, as the authorities cannot be blamed for the service book of the late father of the petitioner not being made available to them and within a few months of him being suspended, he had died. Further, in the counter affidavit filed on behalf of respondent no. 5, copy of which has been served on learned counsel for the petitioner on 13.01.2016 itself, the following statement has been made at paragraphs no. 12 and 13:

“12. That it is accordingly that the concerned D.D.O has been directed to immediately reconstruct service book of the petitioner’s father on the basis of service details made available by the petitioner.

13. That it is submitted that soon after



reconstruction of the required service book of the petitioner's father that the legal entitlement under different heads such as unutilized earn leave, gratuity and G.P.F. will be positively processed and settled."

8. There being no rejoinder to the same, it is obvious that the service book of the petitioner's father has been reconstructed on the basis of service details made available by the petitioner. Thus, the Court is not inclined to grant any interest as the entitlement of the late father of the petitioner has been paid to him. However, if any payment under any head was required to be made along with any statutory interest, the same is required to be so made. If the petitioner feels that the same has not been done, it shall be open to him to make a representation before the authority concerned which shall consider the matter after verifying it from the records and pass a reasoned order. If any further payment is required to be made in terms thereof, the same would also be paid to him.

9. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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