

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1522 of 2017
IN
Civil Writ Jurisdiction Case No. 7576 of 2015**

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Dr. Rana Ran Keshri Singh, son of Late Ram Lakhan Singh, Resident of 204,
Ushaparan Apartment, Rajendra Path, N.S.K. Puri, Boring Road, Patna- 800013.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary Cum Chairman, Science and Technology Department,
Government of Bihar, Technology Bhawan, Bailey Road, Patna.
3. The Secretary, Executive Committee-Cum- Director, Science and Technology,
Bihar Council of Science and Technology Bhawan, Baily Road, Patna.
4. Project Director, Bihar Council of Science and Technology and Bihar Remote
Sensing Application Centre, Planetarium Complex, Patna.
5. Subodh Kumar Verma, Assistant-Cum- Accountant, Bihar Remote Sensing
Application Centre, Planetarium Complex, Patna.
6. Ravindra Singh, Senior Assistant, Bihar Council of Science and Technology
Centre, Planetarium Complex, Patna.
7. District Provident Fund Officer, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Raj Nandan Prasad
For the Respondent/s : Mr. PUSHKAR NARAIN SHAHI-AAG6

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 25-06-2018

Challenge in the present Letters Patent Appeal is to the
order dated 19.09.2017 passed by the learned Writ Court in Civil Writ



Jurisdiction Case No.7576 of 2015. By the impugned order, the learned Writ Court has been pleased to dismiss the writ application preferred by the petitioner for a direction commanding the respondents to grant him the amount of gratuity, group insurance and leave encashment with up-to-date statutory interest. The petitioner had also prayed for quashing of the letter dated 16.04.2015 (Annexure-4 to the writ application) issued by the Project Director, Bihar Remote Sensing Application Centre and Bihar Council of Science and Technology by which he had refused to give the aforesaid dues claimed by the petitioner.

2. A perusal of the letter, as contained in Annexure-4, issued by the Project Director, would show that this petitioner was appointed on the post of Cartographer vide office letter No.BIRSAC-16 dated 19.09.1987. The post on which the petitioner was appointed was a temporary post and the petitioner had himself resigned from the said post with effect from 01.03.2008. His service was not even made permanent by that time.

3. Learned counsel for the petitioner-appellant submits that at the time of resignation petitioner was not paid any amount of gratuity, group insurance, leave encashment and arrears of 6th pay revision. He was also not paid the amount of provident fund for the period August, 1988 to October, 1989 which according to him was



wrongly deposited by the authority in G.P.F. account instead of E.P.F. account. He further claims that one similarly situated person namely Rajani Thomus also resigned from the post of Typist in the year 2014 from the office of the Bihar Remote Sensing Application Centre, in whose case all the said dues like amount of gratuity, leave encashment, group insurance and benefit of 6th pay revision had already been given to her.

4. It is submitted on behalf of the petitioner-appellant that gratuity is a statutory right and benefit of the same to the petitioner-appellant, who has rendered continuance service for more than fifteen years, cannot be deprived.

5. From the counter affidavit available on record it appears that the appointment of the petitioner against the temporary post of Draftsman in the year 1987 and his continuance till his resignation with effect from 01.03.2008 has not been disputed. A plea has been taken on behalf of the respondent nos. 2 and 3 that since the petitioner's service was not confirmed so gratuity would not be payable to him and similarly the leave encashment and other facilities of group insurance cannot be provided to him.

6. As regards the benefit of 6th pay revision, it is stated in the counter affidavit that the benefit of the revised scale has been provided to the ex-employees with effect from January, 2006 and to



retired employees from 01.04.2007. It is the stand of the respondents that since the petitioner has resigned on 01.03.2008 he became entitled for revised salary from April, 2007 to February, 2008, but because the petitioner has already received excess payment from 21.09.2005 because of granting/placing the petitioner wrongly in the higher pay scale of Rs.5000-8000 instead of Rs.4500-7000 which is his correct replacement pay scale as per 5th pay revision so recovery of the excess amount of Rs.49192/- is to be made from the petitioner. It is stated that to effect the recovery, a letter dated 06.10.2015 seeking explanation from the petitioner has already been served upon him, however, a reply thereto is still awaited.

7. Regarding the provident fund amount it is stated that the petitioner may approach the District Provident Fund Officer, Patna (respondent no.6) for release of the same and the answering respondents accordingly forward the application of the petitioner if so called for. Regarding similarity of the case of the petitioner with one Mrs.Rajani Thomas, it is stated in the counter affidavit that she was confirmed during her service period with effect from 07.07.1993 and she had taken voluntary retirement from service after due permission of the organization. Therefore, her case cannot be equated with the case of the present petitioner-appellant.

8. In response to the counter affidavit, petitioner in his



rejoinder has stated that amounts of General Provident fund which has been wrongly deposited in the Contributory Provident Fund and group insurance were being deducted from the salary of the petitioner and he would also be entitled for leave encashment.

9. In the supplementary counter affidavit filed on behalf of the respondent no.4 it has been brought to the notice of this Court that a sum of Rs.10737/- under the heading Group Insurance has been paid to the petitioner. The amount deducted from the salary of the petitioner under the heading GPF+D.A. (part) Rs.2774.25 has also been paid vide given cheque details.

10. Having gone through the materials available on the record and after hearing the counsel for the parties, we are of the considered opinion that prima facie it seems that the petitioner-appellant had been working for more than fifteen years in the organization. He is claiming his gratuity and other dues. We do not accept the submissions of the respondents that only because the petitioner-appellant was not made permanent in service, he would not be entitled for gratuity and, therefore, we give liberty to the petitioner-appellant to agitate the issue regarding his claim on account of gratuity before the competent authority under the Payment of Gratuity Act, 1972 and on the petitioner-appellant filing such application in accordance with law within sixty days from today, the competent



authority under the Payment of Gratuity Act shall consider the same on its own merit and shall not reject the same on the ground of limitation. The competent authority shall consider all such questions which may be raised before it on behalf of the parties and shall pass an appropriate order in accordance with law within a period of three months from the date of filing of such application by the petitioner-appellant. Regarding other dues such as salary on account of the revision of pay, leave encashment etc. the petitioner-appellant shall file a detail representation enclosing all such materials which are there in respect of his claim and on his filing such an application within 45 days from today the respondent no.4 shall be obliged to consider the same and pass a reasoned order dealing with the claim of the petitioner-appellant within a period of three months from the date of filing of such representation by the petitioner-appellant and the payable amount, if any be paid to the petitioner-appellant within one month thereafter.

11. So far as the claim of the petitioner on account of pension etc. is concerned, we do not find any merit in the contention of the petitioner as regards the payment of the pension and we are of the view that the learned Writ Court has not committed any error in taking a view that once the petitioner has resigned from the service it would amount to forfeiture of his past service and hence there cannot



be any order or direction for payment of pension.

12. Save and except the liberty which has been granted to the petitioner-appellant hereinabove, we do not find any reason to interfere with the judgment of the learned Writ Court. The Letters Patent Appeal is, therefore, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	N/A
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