IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6072 of 2016

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Mithlesh Prasad Chaudhary, Son of Late Chottan Chaudhary, resident of Mohalla- Kajichak, Ward No. 9, Post & Police Station- Barh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Depasrtment of Home Government of Bihar, Patna.
2. The Inspector General of Police, Government of Bihar, Patna.
3. The District Magistrate, Vaishali at Hajipur.
4. The Superintendent of Police, Vaishali at Hajipur.
5. The Deputy Superintendent of Police, Vaishali at Hajipur.
6. The Accountant, Police Office, Hajipur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Ojha, Adv.
Ms. Nutan Mishra, Adv.

For the Respondent/s : Mr. Harish Kumar, GP8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-05-2018

Heard Mr. Ajit Kumar Ojha, learned counsel for the petitioner and Mr. Harish Kumar, learned GP-8, for the State.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The undisputed facts leading to the present writ petition briefly stated is that the petitioner, who was to superannuate from the post of Constable with effect from 31.01.2014, on account of some confusion prevailing, was allowed to continue until 30.9.2014 when his actual date of superannuation of the petitioner dawned upon the respondent to superannuate him on the said date, but with effect from

31.01.2014 to issue the order bearing Memo no. 3388 dated 11.10.2014 enclosed at Annexure-2 issued under the signature of the Superintendent of Police, Vaishali. The said order also stipulates recovery of the amount drawn by the petitioner with the effect from 1.2.2014 until 30.09.2014. Consequentially an order was issued bearing Memo no. 93 dated 15.01.2015 again under the signature of the Superintendent of Police, Vaishali impugned at Annexure-3 to such effect, whereby the authorities concerned were directed to recover an amount of Rs. 2,18,340/- from the retiral benefits of the petitioner.

The issue is whether the petitioner having served the department without committing any fraud or misrepresentation but admittedly beyond the age of superannuation, any recovery of salary paid to him for the said period i.e. 1.02.2014 until 30.09.2014, can be allowed?.

I do not need to ponder over the issue because identical issue having engaged this Court in a case reported in 2000(1) PLJR 505 (**Kaushaliya v. State of Bihar and Ors**.) where in a similar manner employees were allowed to continue beyond their date of superannuation, a Co-ordinate Bench taking note of the opinion expressed on the issue by the Apex Court as noted therein has held that in absence of any charge of fraud or misrepresentation by the petitioner in continuing beyond the date of superannuation, the recovery would not be permissible.

In view of the legal position so settled, there cannot be any recovery. The issue is that what would happen to the payment of retiral benefits. Obviously the petitioner has drawn his salary for the period 1.02.2014 until 30.9.2014 on account of having continued in service beyond the date of superannuation. Now in absence of any evidence reflecting fraud or misrepresentation on his part, this continuation would amount to re-engagement of the petitioner beyond the superannuation date and for which, he was fully entitled to draw salary but then his admissible pension for the said period would have to be adjusted against the salary so paid to the petitioner for this period and his actual pension would start with effect from 1.10.2014.

For the reasons so discussed above and in view of the issue settled in the case of **Kaushalya** (supra), the order dated 11.10.2014 impugned at Annexure-2 together with the order bearing Memo no. 93 dated 15.01.2015 issued by the Superintendent of Police, Vaishali impugned at Annexure-3, whereby directions have been issued to recover an amount of Rs. 2,18,340/- from the retiral benefits of the petitioner can not be sustained and is accordingly quashed and set aside. As held above, the respondents after adjusting the pension payable to the petitioner against the salary paid for the period

1.2.2014 to 30.9.2014 would pay his pension with effect from 1.10.2014 together with other retiral benefits.

The writ petition is allowed with the direction above.

(Jyoti Saran, J)

Archana/Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.06.2018
Transmission Date	NA