IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8694 of 2017

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Hare Krishna Lal Das, Son of Late Kewal Krishna Das, Resident of Village- Ghangheya, Post Office- Laxmanpur Via/Police Station- Bahera, District- Darbhanga, PIN- 847201.

.... Petitioner/s

Versus

1. The Bihar State Food and Civil Supplies Corporation Ltd. through the Chairman Cum Managing Director, Sone Bhawan, Birchand Patel Path, Patna-1.
2. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd., Sone Bhawan, Birchand Patel Path, Patna-1.
3. The Chief of Administration, Bihar State Food and Civil Supplies Corporation Ltd., Sone Bhawan, Birchand Patel Path, Patna-1.
4. The Chief of Finance Bihar State Food and Civil Supplies Corporation Sone Bhawan, Birchand Patel Path, Patna-1.
5. The Chief of Claim, Bihar State Food and Civil Supplies Corporation Ltd., Birchand Patel Path, Patna-1.
6. The District Manager, Bihar State Food and Civil Supplies Corporation, District Office Motihari, District - Motihari.
7. The District Manager, Bihar State Food and Civil Supplies Corporation, District Office Rohtas (Sasaram).

………….. Respondents 1st Set

8. The Regional Provident Fund Commissioner, Employees Provident Fund Organization, Nidhi Bhawan, R-Block Road No. 6, Patna.
9. The Assistant Commissioner, Employees Provident Fund Organization Sub Regional Office, Muzaffarpur, District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anjani Kumar, Sr. Advocate Mr. Gajendra Kumar Jha, Advocate
For the Respondent No. 1 to 7	:	Mr. Shailendra Kumar Singh, Advocate
For the Respondent No. 8 & 9	:	Mr. Madhav Krishna, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
Date: 23-07-2018

Heard learned counsel for the petitioner; Bihar State Food and Civil Supplies Corporation Limited (hereinafter referred to as the 'Corporation') and E.P.F.O.

2. Pursuant to order dated 25.06.2018, the Managing Director of the Corporation is also present and has filed his supplementary counter affidavit.

3. The petitioner had originally moved the Court for the following reliefs:

> *"That this is an application for issuance of an appropriate writ, order or direction for directing the respondent authorities concerned of the respondent corporation (i.e. B.S.F.C) to forthwith ascertain the full payable amount of post retiral dues/ benefits such as Gratuity, Leave Encashment "out of duly sanctioned earn leave periods", as also C.P.F. accumulation remain in the C.P.F. Account Code for the period prior to exemption and/or remitted by respective district offices of the corporation inclusive of District Rohtas (Sasaram) comes payable as last pay on the basis of admissible scale of pay adopted by the corporation for its staffs and officers including the post of the petitioner held during service till declared date of retirement on/from 29.02.2008.*
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> *As also for direction to ascertain and ensure actual payment of all the admissible per-retirement dues of the petitioner without further delay including difference amount payable against 5th (Central revised fitment) pay revision commission recommendation as well as full salary amount payable on duly adopted 5th (Central revised fitment) and 6th revised commission recommendation for the declared period of active continuous service since*

30.07.2006 up to age of 60 years (on/from 29.02.2008) in tune with the payments made to other employees.

Further the respondent official concerned of the Bihar State Food and Civil Supplies Corporation (in short B.S.F.C) may also be held liable to pay penal interest at the rate of 10% per annum over and above the entire dues amount from the respective due date/dates till actual payment is made for unnecessary dragging the poor ailing petitioner for his hard earned legitimate amount of salary etc. despite order/direction of Hon'ble Court dated 27.02.2008 (Annexure-5) and post retiral dues as well from no fault on the post of the petitioner and deprived from settlement for a considerable delay of more than 8 (eight) years.

And/or pass such other order or direction as this Hon'ble Court may deem appropriate in the facts and circumstances of the present case."

4. By various orders, the Court had required the Corporation to file affidavits with regard to the claim of the petitioner. From the pleadings, it appears that upon verification of the entire service record of the petitioner, the Corporation has quantified the loss suffered to it and in terms thereof, as per the resolution of the Board of Directors dated 13.11.2001, on the said recoverable amount, interest being chargeable, the same has been calculated. Similarly, the dues which were payable to the petitioner have also been worked out. The stand today is that the amount which the petitioner is still required to make good, is over Rs. 10 lakhs, after adjusting what is due and payable to him.

5. It has also been submitted on behalf of the respondents

that the remaining dues of E.P.F., arising out of non deposit of the contribution of the employer towards E.P.F., the amount which the petitioner would have been entitled for such deposit has been calculated and then adjusted in the amount recoverable from him.

6. Learned counsel for the petitioner submitted that neither during the service tenure of the petitioner nor even after his superannuation, for many years, there was any demand raised by the authorities against him and had it being raised, he would have suitably replied to the same and shown his innocence. It was further submitted that after retirement now, no proceeding can be started against him as he has already superannuated, initially on 28.02.2006 and thereafter, pursuant to an order of the Court extending by another two years the age of superannuation, on 28.02.2008. Learned counsel submitted that in similar circumstances, a Bench of this Court in C.W.J.C. No. 7873 of 2009, in the case of **Ram Chandra Prasad Thakur vs. State Food Corporation and Ors.** and its analogous case, by order dated 09.09.2009, had directed for full payment of pension holding that the petitioner having retired, proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules'), cannot be started. It was further submitted that the same has been upheld by the Division Bench by order dated 17.03.2010 in L.P.A. No. 1269 of 2009 and its analogous case.

Learned counsel further submitted that even the dues under the E.P.F. having been attached/adjusted/recovered, is bad as law prohibits the same.

7. Learned counsel for the Corporation submitted that they are within their right to recover the amount for the reason that due to connivance, at the relevant time, these things were not brought to the notice of the Competent Authority so as to enable starting of appropriate proceeding. It was further submitted that the resolution of the Board of Directors dated 13.11.2001, in its 104th meeting, which clearly stipulates such recovery to be with interest, not having been challenged or struck down, the petitioner is liable to be dealt with in terms of such decision, and moreover, the petitioner superannuated after many years of taking of that such decision and, thus, during the service period, he was fully aware of it and also covered by such decision. Learned counsel submitted that once the Competent Body of the Corporation i.e., the Board of Directors, has taken a decision, in service matters, where rights are totally contractual, the decision binds the petitioner to it and him not having raised any grievance with regard to such resolution which came into effect much prior to his superannuation, he cannot now take a stand that he shall not be governed by it. With regard to the decision relied upon by learned counsel for the petitioner, in the case of **Ram**

Chandra Prasad Thakur (supra), learned counsel submitted that the Court had gone only on the premise that in terms of Rule 43(b) of the Rules, no proceeding being maintainable in law, the writ petitioner had to be paid his entire retiral benefits, but without any reference or consideration of the resolution of the Board of Directors dated 13.11.2001. However, on a direct query of the Court with regard to his stand relating to adjustment from the E.P.F. dues of the petitioner not being amenable to any such withholding or adjustment, learned counsel fairly submitted that the law does not permit the same. At this juncture, the Managing Director of the Corporation also fairly submitted that such dues shall be paid to the petitioner within one week.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the matter stands disposed off in the following terms:

(a) As rightly the stand has been taken by the Managing Director of the respondents and learned counsel appearing on his behalf, that E.P.F. dues cannot be attached or withheld under any circumstances, let the same be paid to the petitioner after fresh calculation with regard to the quantum. The same be done within two weeks from today.

(b) As far as charging of interest in terms of the resolution of the Board of Directors dated 13.11.2001 is concerned, the Court would only clarify that on the day the petitioner superannuated i.e., 28.02.2008, the clock would stop, at least with regard to charging of interest by the Corporation, for the reasons that on that day, the master servant relation having come to an end, whatever was due and payable to the petitioner from the side of the Corporation was in the possession of the Corporation which was holding it in trust for the petitioner. Once an amount due and payable to the petitioner was being held by the Corporation, whatever was due and payable by the petitioner to the Corporation had to be adjusted on that very day. The same not having been done, would not fasten the petitioner with the liability to pay interest in terms of the resolution dated 13.11.2001, beyond his date of superannuation. Thus, the authorities are required to rework their calculation as on the date of superannuation of the petitioner with regard to calculating interest in terms of the resolution dated 13.11.2001. Once the same is done, the Corporation shall communicate to the petitioner with regard to either any dues which he is liable to pay to the Corporation or with regard to any amount which the Corporation, after such recalculation finds that may be payable to the petitioner, in which case, the same shall be paid within four weeks of the communication of the order. Let the said exercise be completed within four weeks from today. Depending upon the same, the aggrieved party shall be at liberty to move before the appropriate forum in accordance with law for the redressal of his grievance.

9. Personal appearance of the respondent no. 2 stands dispensed with.

(Ahsanuddin Amanullah, J.)

P. Kumar

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