IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1521 of 2017

In

Civil Writ Jurisdiction Case No.11767 of 2015

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Dr. Baijnath Singh, son of Late Tilak Singh, Resident of Village- Barhmpura, P.S.- Brahampura, P.O.- M.I.T., District- Muzaffarpur.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Government of Bihar, Patna.
2. The Director-in- Chief, Health Services, Government of Bihar, Patna.
3. The Deputy Secretary, Health Department, Government of Bihar, Patna.
4. The Accountant General, Bihar.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Kant Singh, Advocate

For the Respondent/s : Mr. S.D. Yadav, AAG-IX

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-07-2018

Seeking exception to an order passed by the learned Writ Court on 22.09.2017 in C.W.J.C. No. 11767 of 2015 this appeal has been filed under Clause 10 of the Letters Patent. Matter pertains to settlement of post retiral claims of the petitioner after his retirement.

Today when the matter was taken up for hearing, we are informed that except for payment of encashment of Earned Leave to the extent as is permissible under the statutory rule, all other post retiral claims have been settled and the post retiral claims of the petitioner with regard to encashment of Earned Leave only remains to be paid now.

On 23.04.2018 we had adjourned the matter with a direction to the State Government to file a counter affidavit and indicate as to whether any departmental proceeding or criminal proceedings are pending against the petitioner which prevents him from claiming the aforesaid benefit. Today, the counter affidavit has been filed which goes to show that based on an Inspection Report conducted and submitted vide Paragraphs 6 and 7 that payment of encashment of Earned Leave has been kept in abeyance.

Admittedly, no charge-sheet or departmental inquiry was pending on the date when the petitioner attained the age of superannuation and was permitted to superannuate. That being so, in view of the law laid down by the Supreme Court in the case of Union of India v. K.V. Jankiraman, **(1991) 4 SCC 109,** pendency of a departmental proceeding commences on the date when the disciplinary authority decides to initiate departmental proceedings and thereafter issues charge-sheet. The Supreme Court in the aforesaid case has held that prior to that pendency of a criminal case cannot be construed to have come into force. In this case also, the petitioner's leave encashment can be withheld only if a departmental proceeding was initiated against him or a criminal case initiated on the date of his retirement. Admittedly, on the date of superannuation neither a departmental proceedings were pending or contemplated nor any criminal case initiated. Counter affidavit filed today indicates that only an Inspection Report was received because of which the matter was kept pending.

In our considered view now as department proceedings were not pending against the petitioner on the date of superannuation, all retiral benefits including the encashment of Earned Leave have to be granted to him. That is the law laid down by the Supreme Court and in view of the above, we have no hesitation in holding that merely because some Inspection Report has been received and consideration of the Inspection Report is pending, Leave Encashment cannot be denied to the petitioner after his superannuation from service in the year 2010.

Keeping in view the aforesaid, we allow this appeal and direct that the leave encashment of the petitioner be paid to him as per his entitlement under the statutory rule or the contract of employment within a period of 60 days from the date of receipt of certified copy of this order.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
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