IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.190 of 2018
In
Civil Writ Jurisdiction Case No.9281 of 2014

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1. The State Of Bihar
2. The Engineer-in-Chief-Cum-Special Secretary, Water resources Department Government of Bihar, Patna.
3. The Executive Engineer, Flood Control Division, Naugachhia, Bhagalpur
4. The Sub-Divisional Officer, Flood Control Division, Naugachhia, Bhagalpur.

... ... Appellant/s

Versus

1. Indradeo Prasad Singh S/o Late Bhup Narayan Singh, Resident of Ward No. 7, New Sipahi Tola, P.S. Haat, District, Purnea.
2. The Accountant General, Bihar. Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Anjani Kumar, A.A.G.4
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-04-2019

Heard Shri Anjani Kumar, learned Additional Advocate General, for the State.

The appeal questions the correctness of the impugned judgement dated 29th June, 2017, whereby the learned Single Judge has arrived at the conclusion that the withholding of the pensionary benefits of the respondent-petitioner without there being any procedure followed in terms of the Rule 43 (b) & (c) of Bihar Pension Rules would not be permissible. The learned Single Judge, therefore, held that the action of the appellant State in withholding the amount of pensionary benefit from the respondent-petitioner cannot be justified. A direction was, therefore, given to release the said amount within two weeks. It is stated at the Bar that the said amount has been released in favour of the respondent-petitioner, but the State maintains that it has a right to retain the same and recover the amount on account of loss having been caused by the respondent-petitioner.

It is an admitted position that no departmental or any other proceedings was initiated against the respondent-petitioner. It is the case of the appellant that prior to his retirement the respondent-petitioner had been called upon to hand over charge while he was functioning as a Jr. Engineer in Naugachia. Since he did not hand over complete charge, therefore, he was issued office memos calling upon him in this regard. Yet the complete charge was not handed over and the respondent-petitioner retired from services on 31st July, 2013.

The appellant State finding that the items of which charge had not been handed over were quantifiable and accordingly it resolved to withhold the amount of Rs. 9,04,104/- payable to the respondent-petitioner as pensionary benefits. It is this action that came to be challenged by the respondent-petitioner contending that no such recovery could have been made without taking recourse to law.

Learned counsel for the appellant contends that the respondent-petitioner had practically not disputed not handing over charge and, therefore, it should be presumed that he had also admitted the default committed by him.

We are unable to agree with this proposition inasmuch as not having handed over charge and insisting for appointment of a watchman by itself will not amount to an admission of guilt of defalcation which has to be proved on the basis of any evidence on record. If the appellant State was relying on the communications that had been issued earlier and according to which the appellant pleads that it amounted to admission on the part of the respondent-petitioner, then the said documents along with a proper procedure as prescribed under the Rules for holding a proceeding in order to recover the amount ought to have been held. This was admittedly not resorted to under the Bihar Pension Rules for which there is a clear provision as indicated above. Consequently, any allegation of a guilt of defalcation or misappropriation of any financial amount cannot be presumed to exist so as to allow the appellant to straightaway proceed to recover the amount. The amount has to be quantified on the basis of material evidence and has to be reflected in a tangible form before any recovery sought to be made. For this, a proceeding has to be conducted in accordance with the Rules which are prescribed inasmuch as, admittedly, no proceedings were drawn up against the respondent-petitioner while he was in service and his pensionary benefits were sought to be withheld. As noted above, such withholding of any such post retiral benefits could have been possible had the procedure prescribed under the Bihar Pension Rules be followed. This was also not done.

In the light of what has been stated above, we are unable to find any fault with the conclusion drawn by the learned Single Judge on this count.

Learned counsel for the appellant State submits that the appellant can still proceed to recover the amount under other provisions of law. The said liberty to the appellant, if available under any law for the time being in force shall not be an impediment provided the same is done in accordance with law.

The appeal stands dismissed with the said liberty.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.04.2019
Transmission Date	N/A