

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No. 217 of 2018

In
Letters Patent Appeal No.1529 of 2017

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Ayodhya Prasad S/o Late Budhya Mahto R/o Vill.- Sasour, P.O.- Chero, P.S.- Sarmera, District- Nalanda At Present Mini L.I.C. Colony, P.O.- Chitragupta Nagar, P.S. - Patrakar Nagar, District- Patna.

.. ... Petitioner/Appellant

Versus

1. The State Of Bihar through the Commissioner, Food and Civil Supplies Department, Govt. of Bihar, Patna
2. Commissioner, Food and Civil Supplies Department, Govt. of Bihar, Patna.
3. District Magistrate, Gopalganj.
4. District Supply Officer, Gopalganj.
5. Sub Divisional Officer, Hathua, District- Gopalganj.
6. Block Development Officer, Vijaypur Block, District- Gopalganj.
7. Accountant General, Bihar, Patna.

... ... Respondents/Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ram Janam Prasad, Advocate
For the State	:	Mr. S. Raza Ahmad AAG 5
		Mr. Alok Ranjan, Advocate
For the Accountant General:		Mr. Satyendra Kumar Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

6 03-04-2019 We have heard Mr. Ram Janam Prasad, learned counsel for the petitioner and Mr. S. Raza Ahmad, learned AAG -5 assisted by Mr. Alok Ranjan, learned AC to AAG -5. Mr. Satyendra Kumar Jha, learned counsel for the Accountant General is also present.

It is the contention of learned counsel representing the petitioner that while dismissing the Letters Patent Appeal this Court took a view that it is a case of contributory negligence on the part of the petitioner because he did not take steps for receipt



of his retiral benefits after his retirement as he was in a state of deep depression. It is submitted that while passing the aforesaid order, this Court completely overlooked the averments made in paragraph '9' of the show cause and paragraphs '5' and '6' of the supplementary show cause filed in M.J.C. No. 2046 of 2011 which was reproduced verbatimly in paragraph '4' of the appeal.

The submission is that the respondents have very clearly admitted in the supplementary show cause that payment of retirement benefits could not be made to this petitioner due to non-availability of his service book in the office of the respondents, hence, for this a duplicate service book was opened by them on 03.03.2014 when L.T.I. and signature of petitioner was obtained thereon after being called to personally appear in the office for the said purpose.

Annexures '3' and '3/A' are the copies of the show cause and supplementary show cause respectively filed on behalf of opposite party no. 2 in M.J.C. No. 2046 of 2011. It is submitted that in the facts and circumstances of this case pursuant to the order dated 10.05.2010 passed by the learned Writ Court in C.W.J.C. No. 4355 of 2010, the petitioner submitted fresh pension papers on 15.06.2010 but it took about four years thereafter in completion of the entire process and payment of the entire retiral dues of the petitioner, there is no reason why the respondents shall



not pay a reasonable rate of interest for the delayed period at least after 15.06.2010.

Earlier when the matter was taken up on 30.01.2019 before this Court, Mr. S. Raza Ahmad, learned AAG-5 informed the Court that there are circulars indicating non-payment of interest on account of laches on the part of the employee in submission of pension papers. We granted time to learned AAG-5 to place on record the said circulars. Subsequently, when the matter was taken up on 06.02.2019 we noticed the submissions of learned AAG -5 which are quoted hereunder for a ready reference:

“Heard learned counsel for the applicant and Shri S.Raza Ahmad, learned Additional Advocate General No. 5 for the State.

We had adjourned the matter to enable us to understand the applicability of the rules and circulars with regard to payment of interest on amount that remained, according to the applicant, unpaid within time. Thus, delayed payment and interest thereon being the contention, we find that the learned Single Judge has recorded a finding of contributory negligence which has been affirmed by the Division Bench. The Review Application has been filed contending that it was not the case of the applicant that he had been negligent and rather, to the contrary, in Paragraph 7 of the writ petition it had been categorically stated that the applicant had filed all his requisite papers prior to his retirement in respect of grant of pension. The said Paragraph No. 7 does not appear



to have been controverted by the filing of any counter affidavit by the State. The counter affidavit filed by the Respondent No. 7 i.e. the Accountant General also did not dispute that position. Apart from this, in the previous round of litigation it is stated that no counter affidavit had been filed by the State even then, but a direction was issued to the applicant to furnish fresh documents, whereupon the applicant supplied the documents for the release of pension.

In this background, it is urged that there was no occasion of any contributory negligence being inferred on the part of the applicant and to that extent there is an error apparent on the face of record which deserves to be reviewed.

Before we proceed to examine this contention, it would be appropriate to call upon the State Government to file an affidavit informing the Court about the process adopted by the employer prior to the retirement of the applicant calling upon him to furnish the pension papers and any material that would be available in that regard.

Let an appropriate affidavit be filed within three weeks. Learned counsel for the applicant may provide photostat copies of the requisite brief to the learned Additional Advocate General.

List on 6th March, 2019.”

In course of hearing, today, we find that a counter affidavit on behalf of respondent no. 3 to 6 has been filed in the review application denying the statement of the petitioner that he had submitted the pension papers before the date of his retirement.



It is stated in paragraph 7 that the petitioner has not annexed a single chit of paper (wrongly typed as shit of paper) in support of his submission. The stand of the respondents is that since the petitioner had not submitted his pension papers in the office of Hathua Sub-Division from where he was getting his salary, no payment could be made to him within the time. In paragraph 16 of the counter affidavit, however, it is submitted that the petitioner submitted his pension papers in proper format in the month of June, 2010.

It is further stand of the respondents that the service book of the petitioner was not available in the office of sub-Divisional Officer, Hathua, Gopalganj, hence, the only option was to open a duplicate service book on the basis of the record available in the office. The service book was opened on 03.03.2014 and after completion of the entire process the entire retiral dues were paid to the petitioner in June, 2014 itself.

Consideration

Having heard learned counsel for the parties, we have given our anxious consideration to the submissions made at the Bar.

It is not in dispute that the petitioner retired from service on 31.01.1996. He moved this Court for the first time in C.W.J.C. No. 4355 of 2010 for payment of retiral benefits and in



C.W.J.C. No. 4574 of 2010 for fixation of his pay scale. C.W.J.C.No. 4355 of 2010 was disposed of vide order dated 10.05.2010 by accepting the submission of the petitioner to allow him to submit fresh papers for payment of pension. The learned writ Court directed the petitioner to submit a representation with fresh pension papers in respect of payment of his retiral benefits before the S.D.O., Hathua, Gopalganj within a period of six weeks and the Sub-Divisional Officer was directed to consider the representation of the petitioner in accordance with law and settle his grievance and to pay the admitted dues within a period of six months.

On perusal of the order dated 10.05.2010, as contained in Annexure-‘7’ to the writ application, it appears that although it was the stand of the petitioner that he had not received any retiral dues till date despite submission of all requisite pension papers, it was also simultaneously submitted before the Court that immediately before superannuation of the petitioner, his wife expired as a result of which the petitioner went into deep depression and was in financial crises due to non-payment of his pensionary benefits and he could not take further steps to receive the pensionary benefits. The petitioner proposed before the learned Writ Court for expeditious disposal of the pending claims he would file a fresh the required application. The learned Writ Court,



therefore, took note of the submission of the petitioner and issued a direction as stated in the preceding paragraph. It is therefore, not in dispute that since 31.01.1996 and till filing of the writ application being C.W.J.C. No. 4355 of 2010 the petitioner did not move this Court.

In the aforesaid background when C.W.J.C. No. 4574 of 2010 came to be considered on 30.08.2011, the another learned Single Judge of this Court refused to accept the plea of the petitioner with regard to his not moving the Court for 14 years. The learned Single Judge observed that the petitioner was fishing for grounds to explain the delay and refused to permit the petitioner to agitate his claims in piecemeal by preferring repeated writ applications. It, however, appears that the learned Single Judge observed that if the representation of the petitioner filed in pursuance of C.W.J.C. No. 4355 of 2010 has not been disposed of till date, the petitioner may supplement his representation with regard to reliefs prayed.

When the petitioner was not paid his retiral benefits despite the order of the learned Writ Court in C.W.J.C. No. 4355 of 2010, he moved in contempt vide M.J.C. No. 2046 of 2011 which was disposed of on 05.05.2015 in which the learned Single Judge while considering the request of the petitioner to grant interest on the gratuity, leave salary and pension gave him liberty



to raise his grievance before the competent Court.

Later on C.W.J.C. No. 12313 of 2015 was filed with a prayer to direct the respondents to pay the interest at the rate prescribed under letter dated 07.11.1981 of the Govt. of Bihar (Annexure-11) to the writ application for the delayed payment of gratuity, pension, leave salary and arrear of salary of Time Bound Promotion which were allegedly paid after a lapse of about 18 years. This writ application came to be dismissed giving rise to the Letters Patent Appeal being L.P.A.No. 1529 of 2017 which was also dismissed vide order dated 25.06.2018. It is this order of the Division Bench of this Court of which review has been sought for.

On going through the entire records, we find that although right from the beginning the petitioner has been submitting that he had submitted all his pension papers prior to his retirement but no material has been brought on record to substantiate his submission in this regard rather there are some conflicting statements of the petitioner saying that he could not take step to receive the payment because he had gone in depression due to death of his wife just before his retirement. He came to this Court after about 14 years and he himself offered before the learned Writ Court to submit fresh pension papers to enable him to get the pensionary benefits. No prayer was made before the learned Writ Court to accept his plea that he had



submitted his pension papers prior to his retirement and therefore, directions should be issued to pay the pensionary benefits with interest thereon for all these period of 14 years. The learned Writ Court disposed of the writ application by accepting the proposal of the petitioner to allow him to submit fresh pension papers. In another writ being C.W.J.C. No. 4574 of 2010 which was filed for fixation of his pay scale 14 years after his retirement the learned writ court recorded that the petitioner was fishing for grounds to explain the delay.

In it's order dated 10.05.2010 the learned Writ Court did not issue any direction to pay interest or to consider payability of interest for almost 14 years of period. This order dated 10.05.2010 order has attained finality, therefore we are of the view that in the totality of the circumstances where there is no clinching poof of the fact that petitioner had submitted his pension papers prior to his retirement, he moved this Court after 14 years of retirement and the Writ Court in C.W.J.C. No. 4355 of 2010 did not issue any direction to the respondents to consider payment of interest, it was not a fit case in which in second round of litigation in C.W.J.C. No. 12313 of 2015 the Writ Court could have awarded interest to the petitioner for these period of 14 years.

But we find that this much is evident from the pleadings in this case that after 10.05.2010 the petitioner had submitted the



requisite pension papers in the month of June, 2010, still it took four years to the respondents in preparation of the duplicate service book and payment to the petitioner which could be ultimately made in June, 2014.

In the aforesaid background of facts when the petitioner filed C.W.J.C. No. 12313 of 2015 with a prayer to direct payment of interest for about 18 years, in our opinion, the Writ Court was required to consider payability of interest for the period six months after the date of submission of fresh pension papers till the date of payment. There seems to be an error in appreciation of the admitted facts of the case by both the learned Single Judge as well as the Division Bench while rejecting the request of the petitioner for award of interest in toto.

In our considered opinion, both learned Single Judge as well as the Division Bench committed an error of record apparent on the face of the order in C.W.J.C. No. 12313 of 2015 and L. P. A. No. 1529 of 2017 respectively by not considering this aspect of the matter.

We, therefore, find that the dismissal order dated 25.06.2018 passed in L.P.A. No. 1529 of 2017 is fit to be modified. The L.P.A. No. 1529 of 2017 is to be treated as disposed of as partly allowed with a direction to the respondent no. 2 to consider the case of the petitioner for award of interest at a



reasonable rate for the period six months after submission of the requisite pension papers by the petitioner till the date of payment.

Let a decision in this regard be taken by respondent no. 2 within a period of three months from the date of receipt/production of a copy of this order and the admitted interest which may be awarded by the respondents be paid to the petitioner within the same period.

This review application is disposed off accordingly.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

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