

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14907 of 2019

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Indrajeet Kumar Singh, Son of Late Kamlehwari Prasad @ Kamleshwari Prasad Singh, R/o Maliyapur, P.S.- Maliyapur, District- Jamui

... .. Petitioner/s

Versus

1. The Department of Energy through the Principal Secretary, Govt. of Bihar.
2. The Principal Secretary, Department of Energy, Govt. of Bihar, Patna.
3. The Bihar State Hydro Electric Power Corporation Limited through its Managing Director, Patna.
4. The Managing Director, Bihar Hydor Electric Corporation Limited, Sone Bhawan, 2nd floor, Birchand Patel Marg, Patna.
5. The Manager (Personnel and Administration), Bihar State Hydroelectric Power Corporation Ltd., Sone Bhawan, 2nd floor, Birchand Patel Marg, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr.Brij Bihari Tiwary, Advocate
For the S t a t e	:	Ms.Deepika Sharma, A.C. to S.C.-9
For Respondent Nos.3-5 :		Mr. Shambhu Nath Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

5 15-06-2020 The matter has been listed today for consideration through video conferencing in view of the nationwide lockdown on account of COVID-19 pandemic.

The learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual Court proceedings from their homes, all with the aid of audio visual technology.

Heard learned counsel for the petitioner and learned counsel appearing for the respondent-State.

The petitioner has approached this Court for payment



of retiral dues, including medical bills.

The petitioner retired on 31.01.2019 while working in the Bihar State Hydro Electric Corporation Limited (hereinafter referred to as “the Power Corporation”).

A counter affidavit has been filed.

The respondent-Power Corporation has taken a stand that the petitioner was absorbed in service on 07.02.2018 by Office Order No.2 dated 07.02.2018 (Annexure A of the counter affidavit of respondent Nos.3 to 5). Referring to Clause 3 of the said absorption order, it is submitted that the same clearly contemplated that the Power Corporation would not be obliged to pay the petitioner any financial benefits which accrue prior to his absorption during his employment in the parent organization, namely, the Bihar State Pharmaceuticals and Chemical Development Corporation Limited. It categorically stated that the claims based on service rendered prior to absorption even in respect of gratuity, pension, insurance etc. would not be borne by the respondent-Power Corporation. Having said so, the respondent-Power Corporation has placed on record two cheques by which the petitioner has been paid his due gratuity as well as the medical bills. Photo copies of the two cheques, bearing No.062509 dated 30.08.2019 and No.062529 dated



06.09.2019 have been placed on record. A copy of the cheque dated 02.09.2019, bearing No.784611 for an amount of Rs.7,02,040/-, being the amount of leave encashment paid to the petitioner, has also been brought on record.

It is further stated in the counter affidavit filed on behalf of the respondent-Power Corporation that the dearness allowance of every employee, including the petitioner, up to 142% has been paid. The arrears of D.A., according to the 6th Pay Revision, however, has not been paid as the competent authority has not given any order in respect of the same due to paucity of fund.

The claim of the petitioner for payment of gratuity for the period prior to his absorption based on the office order dated 20.03.2007 (Annexure 1 to the petitioner's reply to the counter affidavit) is not sustainable as the same is in respect of the employees, who prior to their absorption in the respondent-Power Corporation were serving the Power Corporation on deputation. The petitioner, on the other hand, was absorbed under specific terms and conditions, contained in the order of absorption dated 07.02.2018. The absorption of the petitioner is based on the terms and conditions which are binding *inter partes*.



The plea raised in the petitioner's reply to the counter affidavit that other employees, namely, Suraj Mohan, Chandra Bhushan Prasad Singh, Vimal Kant Trivedi and Arun Kumar, have been paid their gratuity from the Power Corporation itself, even for the period of deputation is thoroughly misplaced. The order of absorption of the said employee was on different terms than the terms governing the petitioner's absorption.

The said stand of the respondent-Power Corporation has not been denied or disputed by the petitioner by filing any rejoinder or reply thereto. Further, it may be noted that the petitioner has never objected to the terms of absorption order dated 07.02.2018 under which he was absorbed.

That being so, the petitioner cannot claim a benefit in excess of or contrary to the terms and conditions contained in the order of absorption dated 07.02.2018, the benefit of which he has availed without any objection whatsoever. No legally enforceable claim is made out.

The writ petition is dismissed.

(Madhuresh Prasad, J)

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