

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1580 of 2019

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Rajnath Choudhary, Son of Late Mishri Lal Choudhary, Resident of Village-
Mithepur, PS-Garkha, District-Chhapra.

... .. Petitioner/s

Versus

1. The Administrator, Bihar State Road Transport Corporation, Patna.
2. The Chief of Administration, Bihar State Road Transport Corporation, Patna.
3. The Depot, Superintendent, Bihar State Road Transport Corporation,
Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Karn, Advocate
For the State	:	Mr. Prabhat Kumar Verma, Sr. Advocate
		Ms. Jahan Ara, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 15-07-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Sunil Kumar Karn, learned counsel for the petitioner and Mr. Prabhat Kumar Verma, learned senior counsel along with Ms. Jahan Ara, learned counsel for the Bihar State Road Transport Corporation (hereinafter referred to as the ‘Corporation’).

3. The petitioner has moved the Court for the following reliefs:

“(i) That by way of the present writ application the petitioner seeks indulgence of the Hon’ble Court for issuance of appropriate



writ/order/direction upon the respondents to make payment of retiral dues/benefits to the petitioner who retired from service w.e.f. 31.01.2008 from Bihar State Road Transport Corporation while working on the post of Depot Superintendent at Darbhanga, which are as follows:-

(1) Amount of Gratuity.

(2) Amount of GPF contribution made by the employer.

(3) Leave Encashment.

(4) Benefit of ACP.

(5) Arrears of difference of salary on account of pay revision as per direction of Hon'ble Supreme Court.

(ii) Further to issuance of writ in the nature of certiorari to quash the order dated 14.09.2016 contained in Memo No. 3190 dated 14.09.2016 passed by the Administrator BSRTC where by and where under the departmental proceeding initiated against the petitioner was dropped but contrary to the same the amount of gratuity leave encashment employer's contribution towards GPF amount payable to the petitioner was withheld.

(iii) For issuance of further appropriate writ/order/direction to which petitioner is found to be entitled too in the facts and circumstances of this case."

4. Pursuant to the previous order, supplementary counter affidavit has been filed on behalf of the Corporation in which the stand is that since gratuity is payable only for satisfactory service which, in the case of the petitioner is not fulfilled, as there are many charges against him relating to financial loss caused to the Corporation, including a substantive criminal case, the same, at least for the present, cannot be paid to him. It was further submitted that with regard to other dues, as per Regulation 33(d)



of the Bihar State Road Transport Corporation Contributory Provident Fund Regulations, 1960, the Corporation is permitted to reimburse and indemnify itself with regard to the Corporation's contribution and interest thereon for any loss caused or damage due to or occasioned in any manner by any embezzlement and falsification of account, theft or other criminal offence committed by a subscriber or any other act of misconduct. It is the stand that in terms thereof, the remaining dues of the petitioner amounting to a little over Rs. 3 lakhs and gratuity have been withheld. It is further the stand that till the time, there is no order exonerating the petitioner of such charges, the withholding cannot be held to be unreasonable or illegal. It was further submitted that this Court in its order dated 18.09.2019 in MJC No. 777 of 2018 (**Braj Kishore Roy vs. The State of Bihar and Ors.**) has noticed the provisions of the Regulation and has observed that the Corporation withholding the amount in terms of such provision was not deliberate or willful, and, thus, not amount to contempt. He further submitted that in the departmental proceeding, the only order is that the remaining dues shall be subject to outcome of the criminal case.

5. At this juncture, learned counsel for the petitioner submitted that in view of the stand taken by the Corporation, he



may be permitted to assail the maintainability of the proceedings/charges against him in an appropriate fresh proceeding. It was further submitted that in the criminal case, final form has been submitted by the police.

6. Having considered the aforesaid, the writ petition stands disposed off with liberty to the petitioner to challenge the issue of maintainability of the departmental proceeding/charges before the appropriate forum, in accordance with law. Further, he shall be at liberty to pursue the matter with regard to conclusion of the pending criminal case also before the appropriate forum, in accordance with law.

7. The Court would indicate that it has not gone into the merits of the rival contentions with regard to either the maintainability or otherwise of the proceedings, both on the departmental as well as the criminal side.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

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