IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4585 of 2017

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Karyanand Pandey Sono f Late Shrikant Pandey, Resident of Village-Mahapur, P.S.-Kauakoi, District-Nawada. Presently residing in the House of Lazmi Singh Bank Colony, Keshari Nagar, Patna-24 P.S.-Shastri Nagar

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Education, Govt. Bihar, Patna.
3. The Director, Provident Fund, Bihar, Patna.
4. The District Education Superintendent-Cum-District Education Programme Officer, Patna.
5. The Treasury Officer, Treasury Office Masaurhi, Patna.
6. THe Block Education Extension Officer, Dhanarua, Patna.
7. The Accountant General, Bihar, Patna.
8. The Headmaster, Middle School Dhanaraua Cum Drawing District Officer, Patna.
9. The Headmaster, Primary School Hansapur, Dhanarua, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravi Shankar Sahay, Advocate Mr.Ajay Nandan Sahay
For the State	:	Mr.Subhash Chandra Mishra SC-16
For Acct. General	:	Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

5 29-05-2020 Heard learned counsel appearing on behalf of the petitioner, State and the Accountant General.

The petitioner has filed the present writ petition for the following reliefs:-

> "1. That this application is being filed for issuance of an appropriate writ/writs, order/orders, direction/directions, commanding the respondents to pay arrear

pension amount retiral dues of petitioner along with statutory as well as penal interest within a time fixed by the Court.

Further a direction to the Authorities to pay to the petitioner illegally deducted amount Rs. 43,500/- from the unutilized leave encashment head to the petitioner.

Further a direction to avail pension payment order copy issued by Accountant General office and direction to Treasury Officer to issue pension Book also."

A counter affidavit has been filed on behalf of respondent No. 7 which indicates that office of the Accountant General has already sent necessary sanction order vide letter No. 1281 dated 26.4.2016 and the petitioner has been paid pension amounting to Rs. 8,41,260/- which has been acknowledged by the counsel for the petitioner and the grievance is now confined only to the deduction of Rs. 43,500/- from the unutilized earned leave encashment amount.

Learned counsel for the petitioner submits that the petitioner has not received copy of the counter affidavit filed on behalf of the respondent No. 4.

In the counter affidavit of respondent No. 4 following statements have been made.

"6. That with regard to claim of the petitioner regarding payment of arrears of pension is concerned, it is humbly stated that in view of communication made by the office of the Accountant General, Bihar vide letter no Pen-12/127 dated 27.4.2017 regarding grant of sanction for payment of arrears of pension for the aforementioned period amounting to Rs. 8,41,206/-, the answering respondent vide office order contained in memo no. 3441 dated 10.12.2018 has granted necessary sanction and sent to the office of the Accountant General, Bihar with intimation to the petitioner as well and accordingly, the same shall be paid to the petitioner through the concerned treasury.

7. That so far as another claim of the petitioner regarding payment of alleged illegally deducted amount of Rs. 43,500/- from the unutilized leave of the petitioner is concerned, it is relevant to state here that a departmental proceeding u/r 43B was initiated against the petitioner for certain charges. It is further stated that upon submission of enquiry report by the Enquiry report, the petitioner was asked to 2nd show cause vide letter no. 7376 dated 16.7.2013 but the petitioner failed to reply to the said 2nd show cause and accordingly, after due

consideration, the departmental proceeding against the petitioner wasw concluded vide office order contained in memo no. 9904 dated 24.9.2013 whereby an amount of Rs. 43,500/- was ordered to be adjusted from the amount of earned leave which was embezzlement by the petitioner from the heads of Toilet construction and sports goods of the school amounting to Rs. 18,500/- & 25,000/- respectively and the said office order was also produced before the Hon'ble Court by way of filing show cause in the MJC No. 2585 of 2014 filed by the petitioner which was dismissed vide annexure-4 of the writ application with cost of Rs. 500/- upon the petitioner and it is relevant to state here that the said office order has not yet been assailed by the petitioner and therefore, the said claim is a baseless claim.

8. That in view of aforementioned facts, it would be evident that the claim of the petitioner so far as it relates to payment of arrears of pension is concerned, necessary sanction order has already been issued in terms of sanction sought by the office of the Accountant General, Bihar and as far as payment of an amount of Rs. 43,500/- in terms of amount of earned leave is concerned, the same is a futile claim which is fit to be rejected and in that view of the

> matter, the bonafide claim of the petitioner raised in this case has been redressed."

The respondent No. 4 has also enclosed Annexures-R 4/1, R 4/2 and R 4/3 in support of the averments made in the counter affidavit.

From the aforesaid, it is apparent that the petitioner has been paid arrears of pension. So far as the deducted amount of Rs. 43,500/- is concerned, the petitioner was asked second show cause and thereafter in purported exercise of power under Rule 43B of the Bihar Pension Rules, the action was taken by the respondents to recover the aforesaid amount.

Considering the aforesaid, the writ petition is disposed of with liberty to the petitioner to challenge the action of the respondents in deducting Rs. 43,500/- from his post retiral dues i.e. amount of earned leave, in appropriate proceeding.

With the aforesaid liberty, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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